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OF
SECURITIES.
BEING

A Methodical Treatise of all the LAWS and STATUTES relating to Bills Obligatory, Bonds and Conditions, Judgments, Recognizances, Statutes, Mortgages, Securities Real and Personal, Collateral Securities, and all Manner of Engagements for Money; Shewing how far Persons and Estates are bound, and the Court of Chancery will give Relief.

AND ALSO

The Laws and Statutes concerning Pawns, Pledges, and Usury, With the Methods of Prosecution, Pleadings. &c. and Proper Precedents, in all Cases, interspersed throughout.

To which are added,

The Laws against Bankrupts; with Variety of Law-Cases, Precedents of Commissions, Assignments of Commissioners, Certificates, Deeds of Distribution, &c.

In the ^{8th} SAVOR:

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Rec Mar. 1, 1899.

To the Right Honourable

NICHOLAS

Lord *LECHMERE*,

Chancellor of the Dutchy of
Lancaster.

My LORD,

AS it has been always
customary for Au-
thors to Dedicate
their Writings to Perso-
nages of the most distin-
guished

ii. *The Dedication.*

guished Merit, and the greatest Abilities, I humbly hope You will pardon the Presumption of this Address to Your Lordship.

The following Treatise being writ on a Subject that is partly under the Cognizance of our Chancellors, I presume it will not be improperly plac'd under the Patronage of Your Lordship, who are not only the *Chancellor of the Dutchy*, but by your admirable Learning, deep Penetration, fine Discernment and consummate Knowledge in the Laws of your Country, so highly
Qualified

The Dedication. iii.

Qualified for *the most Important Station.*

The Greatest Abilities and Excellencies are unquestionably Your Lordship's; and tho' the shining Orator seems mostly conspicuous, yet Elegance and Propriety are not more Your Talents than Universal Accomplishments. That *Knowledge of all Kinds* is Familiar to Your Lordship, is what every one allows: And what adds to Your Glory, in an Age confess'd to be too much corrupted, You have always maintain'd the *Justest* as well as the *Brightest* Character.

iv. *The Dedication.*

In the many considerable Employments conferr'd on Your Lordship, You have ever been a Great and Powerful Advocate for publick Justice: You have not known the Laws of your Country, without knowing how they should be executed; and wherever Your Lordship has been retained, either for the *KING* or the *Subject*, Right has prevail'd, and Truth has been Triumphant.

It may here by some Persons be expected, I should particularly enumerate Your Lordship's
Great

The Dedication. v.

Great Perfections, which
have justly raised You to
the Peerage of *Great Bri-
tain*, but They are so very
obvious, that the Task is
as Needleless as it is Difficult,
I therefore only beg Leave
to subscribe my self, with
the greatest Respect,

My LORD,

Your Lordship's most Obedient,

And most Devoted,

Humble Servant,

THE

T H E

P R E F A C E.

IN a Country that is wholly supported by Trade and Commerce, as is the Kingdom of Great Britain, various and frequent are the Occasions and Necessities for Money: And as there is not sufficient of all Sorts of Coin, to answer all the Purposes of Traffick, Securities have been long since introduc'd; wherein there is a mutual Confidence between Man and Man for performing their Engagements, and the Law will enforce a Compliance whenever it is refused by Men of Ability.

To set forth the Extent of the Law, as to its obligatory and restrictive Power over Persons and Estates, made liable by the common Securities of the Kingdom, such as Bills, Bonds, Mortgages, &c. has
a been

viii. The Preface.

been my chief Design in this Undertaking ; and I have made it my Business to trace every Thing from the most hidden Mysteries and Secrets to the most manifest Knowledge of Persons, as well Lawyers as others, on the Subject.

That this is a curious and useful Piece of Learning in the Law, every one will acknowledge ; when the Greatest Men have been sometimes mistaken as to Securities, and by latent Deeds found the Estates, by themselves purchased, or liable for their just Debts, subject to Incumbrances, they ought in Point of Honesty to be exempted from : But as we have some new Laws for Prevention of Evils of this Kind, (particularly the 4 & 5 W. & M. c. 16.) I must confess this Knowledge is now more clear than it has been in Times past.

Under the several Heads of this Treatise, I have regularly interspersed,

The Preface. ix.

*persed, with the Law-Informations
Precedents of Deeds and Instruments
usually employ'd in securing to Cre-
ditors their just Debts and Duties,
Claims and Demands; this I thought
necessary to shew the Nature of Se-
curities more fully, and to enable
the Reader himself to be a Proficient
in drawing these Instruments, so
common in the Business of this Island,
and the Affairs of Mankind.*

*I have sufficiently shewn the Laws
and Statutes relating to all Sorts of
Securities; and particularly set forth
the Methods of Prosecutions, and
Foreclosing the Equity of Redemp-
tion on Mortgages of Lands, &c.
from the Bill in Chancery to the final
Order and Decree, and the Release
or Conveyance thereupon. In my
Notice of Bonds, what relates both
to Principal and Surety you'll find
fully inserted: And under the Head
of Usury I have intimated what
Liberties are allow'd, and may be
practis'd*

x. The Preface.

practis'd by Creditors, with respect to Interest of Money, not subject to the Laws and Penalties of Usury; what Contracts are strictly within the Meaning of those Laws, and what are not.

The Head Bankrupts concerning Debtors and Creditors, this Branch of the Law has also fallen under my Observation: I have introduced all the Statutes of Bankruptcy from the very Beginning to this Time; great Variety of Law-Cases adjudg'd on those Statutes, and Directions how to take out the Commission, with Precedents of Commissions, Certificates, Deeds of Distribution, Assignments of Estates, &c. But I would not have the Reader think, as to my Precedents, (wherein Matters that are new so very frequently happen) that they will serve all Occasions which may possibly occur; For,

Nullum Exemplum est idem omnibus.

T H E

THE
LAW
OF
SECURITIES.

*Of Bills Obligatory, Notes for
Money, &c.*

A Bill from one Man to another is sometimes with a Penalty, and then 'tis call'd a *Penal Bill* ; and sometimes without a Penalty ; but the latter is most frequently us'd, in all common Engagements for Money.

If a Man acknowledge himself by Bill obligatory to be indebted to another in the Sum

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of

The Law of Securities.

of 10*l.* and by the same Bill binds him and his Heirs in 20*l.* and says not to whom he is bound, it shall be intended he is bound to the Person to whom the Bill is made. *Roll. Abr.* 148.

A Man acknowledges that he owes unto *A. B.* 50*l.* to be paid him 10*l.* at such a Day, and so at five several Days 10*l.* until 50*l.* is paid, and for Payment thereof, he binds himself, &c. The Obligee after the five Days are past may bring Action of Debt for 50*l.* for it is a several Bill for the 50*l.* and a Bill also for the 10*l.* *Cro. El.* 771.

If I bind my self to another to pay to him all such Monies as my Brother owes him; and in the End of the Bill is written that, &c. my Brother owes to him 50*l.* This being averr'd in the Declaration is a good Bill, and Action lies; for it is reduc'd to a Certainty. *Cro. Eliz.* 561. But this is doubted *p.* 758. And my Lord Coke held, that whatsoever comes after these Word, *In Witness, &c.* is no Part of the Bill, but may be a Condition, and must be Pleaded, and not Demurred upon.

To a Bill of Debt of 6*l.* 13*s.* 4*d.* with a Proviso that the same was not to be paid until such an one had Recovered in such an Action or Suit then depending, &c. Upon Oyer, the Defendant pleads, no End was made of the Suit, and so the Time of Payment was not yet come. The Plaintiff replies a Composition was made in Discharge of the said Suit, and Issue *pro Quer.* *Per Curiam*, The Money agreed by Composition may be given in Satisfaction of the said Suit, tho' not of the Obligation. The Proviso is Part of the Bill; and if it be not Parcel of the Bill, then it is in Nature of a Condition. *Doderidge* was of Opinion, it was Part of the Bill, and

and that the Words, *In Witness, &c.* are not necessary to a Deed. If it be inserted and subscribed before Sealing, it is good as Part ; and if after Sealing, *per Crew*, it's a Condition. *Bulst.* 3. p. 302.

A Bill obligatory written in a Book, with the Defendant's Hand and Seal to it, is good. *Cro. Eliz.* 613. If I make a Bill thus ; *I do owe and promise to pay to, &c. 50 l. at any Time after the Feast of, &c. when he shall require the same ; for Payment whereof I bind my self to, &c.* (another Person) it is good by the Words of the first Part, and the Words obligatory to another Person are void.

A Servant acknowledg'd he had receiv'd of A. B. 40 l. for the Use of his Master, to be paid at *Michaelmas* following, and sealed the Receipt. In Debt, the Defendant demurrs, supposing this was only a Deed testifying the Receipt to another's Use, and not to charge himself. *Per Cur'*, It is otherwise ; for the Clause of Repayment is general : *Aliter*, if the Bill had recited the Repayment to be made by the Master, then it had been but a Receipt, and merely to another's Use. *Relv.* 137.

An Obligation was made in this Manner : *Be it known to all Men, that I A. B. do owe unto C. D. 50 l. to be paid such a Sum at Michaelmas, and such a Sum at Lady-day : And in Truth the particular Sums do not amount to 50 l. This was adjudged not to be a good Obligation for 50 l. Roll. 2 Rep.*

If a Man by his Deed say, *Memorandum, that I A. have receiv'd 20 l. of B. which 20 l. I A. promise to pay to C. In Witness whereof I have hereunto set my Seal, &c.* Or, if it be, *I shall pay to you 20 l. In Witness, &c.* and I put my Seal. Or sup-

posing it to be thus ; *I owe to, &c. 20 l. to be paid at Easter next ; or, I had of, &c. 20 l. of which I owe him 10 l. or, to be repaid him again ; or, I A. B. do bind my self to, &c. that he shall receive 20 l. &c.* These are all Obligatory. 2 Roll. 146. 22 E. 4. 22.

Where there is a Bill of 100 l. to be paid on Demand, it is a Duty presently, and there needs no actual Demand. *Cro. Eliz. 548.* (And in other Cases a single Obligation or Bill upon the Sealing and Delivery, it is *Debitum in presenti*, tho' *solvendum in futuro.*) If the Plaintiff declares generally, that he often requested, &c. and the Defendant demurs to the Declaration, *per Cur'* he ought to plead ; yet if the Defendant had demanded *Oyer* of the Bill, and upon that had demurred, it had been a good Demurrer, because a Special Demand was in the Bill, and no Special Demand alledged in the Declaration. *Brownl. 56.*

On a Collateral Promise to pay Money on Demand, there must be a Special Demand ; but between the Parties it is a Debt, and sufficiently demanded by the Action. It is otherwise if the Money be to be paid to a third Person, or where there is a Penalty. 3 *Keb. 176.*

In Debt on a Bill to pay 75 l. on Demand ; and if the same be not paid, to pay 150 l. Action is brought for the 150 l. but the Defendant pleads there was no Demand of the Debt : The Plaintiff demurs ; and *per Cur'* the Action is a Demand for the 75 l. (but no Cause to forfeit the 150 l.) The Defendant should plead Tender of the 75 l. &c. But where the Condition of a Bond is to pay on Demand, it is a distinct Deed from the Bond, and there is no Title to the Forfeiture without Demand : But the

the Debt here of 75 *l.* is not lost by not demanding, therefore in Bar the Defendant must say, *uncore prist.* 3 *Keb.* §77.

In Debt upon a single Bill of 50 *l.* the Defendant after Imparance, pleaded that after the last Continuance he had paid the Plaintiff 10 *l.* Parcel of the 50 *l.* and demanded Judgment of the Bill: The Plaintiff demurs; It is an insufficient Plea, because the Defendant did not alledge he had an Acquittance, which he ought to produce; if he had an Acquittance he might have pleaded in Bar or Abatement, &c. *Styl.* 212. Payment without Acquittance is no Plea to a single Bill; and yet if such Payment be pleaded upon a Bill, it being admitted and tried against him who pleaded it, the Trial is good, and Judgment shall be pleaded upon the same. *Cro Jac.* 85.

The Defendant demands *Oyer* of the Bill, wherein he and two others are bound. The Plaintiff demurs: *Per Cur' pro Quer'*; The Defendant ought to have pleaded two others sealed the Bill obligatory, who are in full Life. *Jones* 303.

A Penal Bill contain'd these Words, *to be paid as I pay my other Creditors.* The Plaintiff declares generally, that he was indebted to him in 10 *l.* *solvend'* upon Request. The Defendant demands *Oyer* of the Bill, and it was enter'd *in hæc verba*, and insufficient Matter pleaded, upon which it was demurred. Exception was to the Declaration for Variation from the Bill; and *per Cur'*, the Plaintiff ought to declare specially, according to the Bill. Judgment *pro* Defendant. *Cro. Eliz.* 256.

In Debt for 40 *l.* upon a Bill Obligatory, the Plaintiff declares, that the Defendant by his

Bill dated, &c. confessed himself indebted to the Plaintiff in 20 *l.* *solvend'* at *Michaelmas* next following ; *ad quam quidem solutionem* he was bound in 40 *l.* and for Non-payment of the 40 *l.* the Action was brought : The Declaration is ill, because it is not therein alledged that the 20 *l.* was not paid at the Day ; for if otherwise, the 40 *l.* was not due, it being no Obligation with a Condition. 1 Roll. 414.

But in *Style, Pasch. 23 Car. B. R.* Debt on a Bill Penal, and Verdict *pro Quer'* ; it was moved in Arrest of Judgment, that the Plaintiff shewed not that the Defendant did not pay the Money at the Day limited in the Bill, but only said, *non solvit, &c.* He declared the Defendant was bound to pay such a Sum *legalis Monetæ*, and did not say *Angliæ* ; the Court over-ruled both Exceptions, and the Plaintiff had Judgment.

In the Case of *Woolvil and Young*, the Plaintiff declared upon the Custom of England, *scil.* That if any Person sign a Bill to pay Money at a Day, that by the Custom he ought to pay it upon that Day ; and then sets forth, that the Defendants were *Residentes & Negotiantes infra hoc Regnum, &c.* And that they had signed such a Bill, but did not pay the Money ; and upon Demurrer to the Declaration, it was held to be ill, for this Way of Declaring so generally will exclude all Considerations, which must be averr'd. Every Man is *Negotians* in the Kingdom, and if the Plaintiff would have brought his Case within the Custom of Merchants, he ought to have said *Commercium habentes*, or have shewed that the Bill signed was a Bill of Exchange. And in the Case of *Sarsfield and Witherly*, the Declaration was, that the Defendant *Witherly* was *Residens & Negotians apud London, &c.* with-

out saying *Commercium habens* ; but it appear'd by the Declaration to be a Bill of Exchange. *Salk.* 124, 125. 2 *Vent.* 295. 5 *Mod.* 367.

No *Indebitatus Assumpsit* lies on a Bill of Exchange ; a Judgment was staid on that Point in *B. R.* in the Time of Chief Justice *Hale*, and the like since in the *Exchequer* ; and it is not material whether the Person against whom the Bill is drawn has Effects in his Hands when he accepted the Bill, or not. 1 *Salk.* 125. This was mov'd 5 *Mod. Rep.* 13. on Arrest of Judgment, because the Action was for Money won at Play on a Wager, by a general *Indebitatus Assumpsit*, which is not esteem'd a good Promise in Law, &c.

Indebitatus Assumpsit for 53 *l.* due to the Plaintiff upon a Bill of Exchange drawn upon the Defendant, and accepted by him, according to the Custom of Merchants, &c. After Verdict for the Plaintiff, Arrest of Judgment was mov'd, that tho' an Action on the Case does well lie upon the Custom of Merchants, yet an *Indebitatus Assumpsit* may not be brought. By *Winnington*, it doth well lie upon a Bill of Exchange accepted, and also upon the Defendant's having Effects of the Drawer in his Hands, having read the Value ; for so it must be intended as the Foundation of a general Verdict. *Rainsford contra* ; and the Verdict would not help it. My Lord Chief Baron and the whole Court agreed, that a Bill of Exchange accepted, &c. was indeed a good Ground for a Special Action upon the Case, but that it did not make a Debt : First, because the Acceptance is but conditional on both Sides ; if the Money be not receiv'd, it returns back upon the Drawer of the Bill, for he remains liable, and this is but colla-

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teral ; and the Word *onerabilis* doth not imply Debt, &c. 3 *Show.* 1 *Salk.* 125. *Mod. Rép.*

A Note was given thus : *I promise to pay J. S. or Order, the Sum of 100 l. on Account of Wine had from him.* J. S. indorses this Note to another ; the Indorsee brings his Action against him that drew it, and declares upon the Custom of Merchants, as upon a Bill of Exchange, &c. But Motion was made in Arrest of Judgment, &c. The Custom in this Case was adjudg'd Part of the Common Law of *England*, and the Actions became frequent as the Trade of the Nation did encrease ; Chief Justice *Holt* said these Notes are not in the Nature of a Bill of Exchange ; for the Reason of the Custom of Bills of Exchange is for the Expedition of Trade, &c. He said, if the Indorsee had brought his Action against the Indorser it might lie ; for the Indorsement may tantamount to drawing a new Bill ; or he may sue the first Drawer in the Name of the Indorser, and receive the Money to his own Use, &c. He advis'd with two Merchants, and they told him it was frequent to make such Notes ; and also that Bonds were oftentimes transferr'd for Money, and indorsed as Bills of Exchange. But the Court took Time to consider of it. *Mod. Cases* 29. *Buller vers. Crisp.*

The Motion for Arrest of Judgment in this Cause was upon the Authority of *Martin and Clark's Case* : But *Broderick* would distinguish this Case from that ; for there the Party to whom the Note was originally made brought the Action, but here it is by the Indorsee ; and he that gave this Note made it assignable or negotiable by the Words, *or Order*, which amount to a Promise to pay it to any whom he should appoint ;

point ; and the Indorsement is an Appointment to the Plaintiff.

A Bill of Exchange, payable to a Man or Bearer, is not assignable to enable the Indorsee to bring an Action if the Drawer refuse Payment : But by a Bill to a Man or Order, an express Power is given to the Party to assign, and the Indorsee may maintain an Action. And the first is a good Bill between Indorser and Indorsee ; the Indorser is liable because the Indorsement is in Nature of a new Bill. (And *Quære* if this be not alter'd by Statute ; & 4 *Annae*) *Salk.* 125.

By the Law every Indorser is always liable as the first, and not discharg'd by the Acceptance of the Bill by the Indorsee ; but by Custom the Indorsee is to receive the Money of the first Drawer, if he can ; and if he cannot, then the Indorser is to answer. A blank Indorsement does not actually transfer the Property ; but the Indorsee may fill it up to charge the Indorser, &c. *Salk. Rep.* 122, 126.

A Bill of Exchange directed to one to pay so much for *Value receiv'd* shall be a good Discharge of the Debt, if the Bill be not return'd back to the Drawer in convenient Time, tho' the Note be not paid ; for keeping a Bill long is Evidence that he thought the Merchant good, and agreed to take him as Debtor. A Gentleman travelling for Education, &c. draws a Bill of Exchange, this is negotiating the Bill, and makes him a Merchant, &c. *Rep. Show.* 156, 127.

If *A.* has Money to lodge in *B's* Hands, and would have a negotiable Note for it, it's only to say thus : *Mr. B Pray pay me, or Order, so much Money, Value to your self.* This being sign'd and

and B. accepting it, will be good ; or he may take the common Note, and say, For Value to your self, pray Indorse so much, &c. *Mod. Caf.* 30.

There is a Difference between the Servants of Merchants and those of other Men, in Matters concerning their Trade and Way of Dealing, as to answer Bills of Exchange, and Letters of Advice concerning Goods, &c. which require Dispatch ; but the Servant of a Merchant cannot accept of a Bill of Exchange without plain Evidence that he has Authority to do it. *Lex Mercat.* 265.

It is good Evidence in this Case, that the Master allow'd the Payment, or Protesting of Bills, &c. drawn by his Servant, or gave him such Authority ; for it is a very great Hardship that a Servant should have Power to ruin his Master without his Knowledge, &c. And if a Merchant sends his Servant to receive Money, such Servant may not receive a Bill for it, because it is not a Pursuance of his Authority ; and it would be void if done by any other Servant of a private Person. *Mod. Cafes.* 36.

The Court agreed that if a Master sends his Servant to receive Money upon a *Goldsmith's Bill* or any other, and the Servant takes another Bill upon another Person for Payment, that shall not bind the Master without some subsequent Act of Consent ; as if he do not send the Bill back in reasonable Time, or there be other Circumstances, &c.

Serjeant *Darnel* ; In some Cases Notes may be given for absolute Payment, as if one comes to buy Goods of another, and having agreed on a Price, the Buyer upon Delivery of the Goods gives the Seller a *Goldsmith's Note* in Satisfaction ;
this

this shall be look'd upon as Payment *prima facie* ; or it shall lie upon the Seller to prove that it was a conditional Payment, and so express'd at that Time. *Mod. Caf. 37.*

Upon a Motion for a new Trial in a Cause, where the Matter was upon protesting a Bill of Exchange ; Serjeant *Maynard* said, the Protest must be on the Day that the Money was due. But by *Twysden* it was ruled, that if a Bill be denied to be paid, it must be protested in a reasonable Time, and that is within a Fortnight : And the Debt is not lost by the not doing it on the Day. A new Trial was denied. *Salk. 644. 1 Lev. 9, 41, 97, &c.*

In a Writ of Error, on an Action brought against the Drawer of an Inland Bill of Exchange ; *Raymond* objected, that since the Act of 9 *W. 3.* no Damages shall be recovered against the Drawer upon a Bill of Exchange without a Protest, and therefore the Action lies not, here being none ; but my Lord Chief Justice *Holt* said, the Statute never meant to destroy the Action for Want of a Protest, but only to deprive the Party from recovering Interest and Costs against the Drawer, without Notice of Non-Payment by Protest : Before the Statute, if a Bill was foreign, one could not resort to the Drawer to charge him for Non acceptance, or Non-Payment, without a Protest, and reasonable Notice thereof ; but in Case of an Inland-Bill it was otherwise.

The Protest was order'd for the Benefit of the Drawer ; for if any Damages accrue to him for Want of Protest, that shall be born by him to whom the Bill is made ; and if no Damages arise to him by being longer out of the Money than he ought, there is no Harm done : And
Protest

Protest is only to give formal Notice that the Bill is not accepted, or accepted and not paid : And if in such Case the Damage amount to the Value of the Bill, there shall be no Recovery ; but otherwise the Debt is not lost, which ought to appear, *&c. Mod. Cases, 80, 81. Brough versus Perkins.*

Protest of a Bill of Exchange.

Know all Men, That I *A. B.* on, *&c.* at the usual Place of Abode of *C. D.* have demanded Payment of the Bill of which the above is a Copy, which the said *C. D.* did not pay. Wherefore I the said *A. B.* do hereby Protest the said Bill. Dated, *&c.*

The Statute 9 & 10 *W. 3. c. 17.* enacts, that all Bills of Exchange dated at or from any Place in this Kingdom, of the Sum of 5 *l.* or upwards, upon any Person in *London*, or other trading City, Town or Place, drawn payable at a certain Time after the Date thereof, and in which Bills the Value shall be express'd to be receiv'd, may after their Acceptance in Writing, and the Expiration of three Days after the same shall be due, be protested by a Notary Publick, (or if there be no such, by any other substantial Person of the Place before two Witnesses) on a Refusal or Neglect in Payment ; which Protest shall be made under a Copy of the said Bill, in the Form prescrib'd by the Act ; and shall be notified within fourteen Days after to the Party from whom the Bills were receiv'd, who (upon producing the said Protest) is to repay the Bills with Interest and Charges from the protesting. And in Default of such Protest, or Notice to be

be given as aforesaid, the Person failing shall be liable to all Costs, Damages and Interest thereupon.

In this Act there is a Proviso, that if any such Inland Bills be lost or miscarry, within the Time limited for Payment, the Drawer is obliged to give other Bills for the same Sums, and of the same Tenor, on Security given for indemnifying him in Case the said Bills so lost or miscarried shall be found again.

By the 3 & 4 Ann. c. 9. All Notes sign'd by any Person, &c. whereby such Person, &c. shall promise to pay any other Person, or Order, or Bearer, any Sum of Money; the Money mentioned in such Note shall be construed to be, by Virtue thereof, due and payable to the Person to whom the same is made payable. And the Note to such Person, &c. or Order, shall be assignable over in the same Manner as Inland Bills of Exchange; whereupon the Person to whom such Money or Note is payable or assign'd may maintain an Action for the same, against the Person who sign'd, or any who endorsed the Note, as in Cases of Inland Bills, and recover Damages and Costs of Suit, &c.

If the Party on whom any Inland Bill of Exchange shall be drawn, refuses to accept the same by Under-writing under his Hand, the Party to whom payable is to cause such Bill to be protested, as in Case of foreign Bills, for which Protest 2 s. and no more shall be paid. But no Acceptance of such Inland Bill shall charge any Person unless underwritten or indorsed; and if it be not so underwritten or indorsed, no Drawer shall be obliged to pay Costs, Damages, or Interest thereon, unless Protest be made for Non-acceptance, and within

in fourteen Days after Protest, the same be sent or Notice thereof given to the Party from whom the Bill is receiv'd, or left in Writing at his usual Place of Residence.

Such Bill being accepted, and not paid within three Days after Due, Protest must be made and sent, or Notice given as aforesaid, to charge the Drawer, and the Drawer shall be liable to Payment of Costs, &c. if any one Protest be made for Non-acceptance or Non-Payment, and Notice be sent, given or left. But no Protest shall be necessary, unless the Value shall be express'd in such a Bill to be receiv'd, and unless the Bill be drawn for 20 *l.* at least; and Protest for Non-acceptance is to be made by Persons appointed by 9 *W.* 3.

Where any Person shall accept such Bill of Exchange in Satisfaction of any former Debt, the same shall be esteem'd a full Payment, if he does not use his Endeavours to get the same accepted and paid; and make his Protest for Non-acceptance, &c.

This is the Substance of the 3 & 4 *Ann.* relating to Bills and promissory Notes, and Bills of Exchange; and there is a Proviso in the Conclusion of the Act, that Nothing therein shall discharge any Remedy any Person may have against the Drawer, Acceptor, or Indorser of such Bill. The aforesaid Statute concerning Bills, Notes, &c. is made perpetual. See 7 *Ann.*

In other Cases, Interest upon a Bill of Exchange commences from the Time of Demand; and therefore if there was no Demand made 'till Action brought, the Defendant may plead Tender and Refusal, and *uncore priſt*, and so discharge himself of Interest; but if it be the Defendant's

pendant's Fault, that Demand could not be made, as if he were out of the Kingdom, there Want of Demand ought not to prejudice the Plaintiff. *Mod. Cases* 138.

An Inland Bill of Exchange has been said to be but in the Nature of a Letter; but an Outland Bill is of another Nature, and more regarded in the Eye of the Law; because it is for the Advantage of Commerce with other Countries, which makes it of a more publick Concern.

A Penal Bill for Payment of Money.

Know all Men by these Presents, That I A. B. of, &c. do owe unto C. D. of, &c. the Sum of 10 l. of lawful Money of Great Britain, to be paid unto the said C. D. his Executors, Administrators, or Assigns, on the tenth Day of December next ensuing the Date hereof: To which Payment, well and truly to be made, I bind myself, my Heirs, Executors and Administrators, in 20 l. of like lawful Money firmly by these Presents. In Witness whereof I have hereunto set my Hand and Seal this Day and Year, &c.

A single Bill for the Payment of Money.

Know all Men by these Presents, That I A. B. of, &c. do owe and am indebted unto C. D. of, &c. in the Sum of 10 l. of lawful Money, &c. to be paid unto the said C. D. his Executors, Administrators, or Assigns, on, &c. next ensuing the Date hereof; for which Payment well and truly to be made, I bind myself, my Heirs, Executors and Administrators, firmly by these Presents. In Witness, &c. A

A Bill of Exchange.

At double Usance pray pay this my first Bill of Exchange, &c. unto Mr. E. F. Merchant, or the Bearer hereof, the Sum of 100 l. *English Money*, &c. for the Value thereof here receiv'd by me of the said E. F. &c.

A. B.

To Mr. C. D. &c.

A Bill of Credit.

This present Writing witnesseth, that I A. B. of London, &c. Merchant, do undertake to and with C. D. of &c. Merchant, his Executors and Administrators, that if he the said C. D. do deliver or cause to be delivered unto E. F. of, &c. or his Assigns, to his Use, any Sum or Sums of Money, amounting to the Sum of, &c. of lawful Money of *England*, and shall take a Bill under the Hand and Seal of the said E. F. confessing and shewing the Certainty thereof; that then I, my Executors, or Administrators, having the same Bill deliver'd to me or them, shall and will immediately upon the Receipt of the same, pay or cause to be paid unto the said C. D. his Executors, or Assigns, all such Sums of Money as shall be contained in the said Bill, at, &c. for which Payment in Manner and Form aforesaid I bind my self, my Executors, Administrators and Assigns by these Presents, In Witness, &c.

A common Note for Payment of Money is only —I promise to pay to, &c. or Order, the Sum of, &c. (Value receiv'd) within twenty
one

one Days after Date hereof, or on Demand, &c.
Witness my Hand this Day, &c.

Of BONDS, and Conditions of Bonds for Payment of Money.

A Bond is an Obligation, containing a Penalty, with a Condition for Payment of Money, or to do or suffer some Act or Thing, &c. But a Debt simply does not arise by the Obligation, but the Performance or Breach of the Condition makes it to be a Debt; for the Obligation is guided by the Condition. *Co. Lit.* 172. 1 *Brownl.* 109.

In all Obligations there are two principal Things; the Parties, and the Sum in which the Obligor is bound; and when both these, as the Obligor and Obligee, are well-named, and the Sum sufficiently expressed, or easily without straining understood to be the Intent, if it be well executed, the Obligation shall be good. *Brownl.* 110.

A. B. is bound in an Obligation of 20 *l.* to *C. D.* the Obligation ran thus: *Noverint universi per presentes me A. B. teneri & obligari C. D. in viginti libr' solvend' eidem A. B. &c.* This Obligation was adjudged good; for the Intention of the Parties appears, and the Certainty of the Bond before shall not be destroyed by the *solvend'* after. *Mich. 4. E. 4.*

An Obligation shall not be avoided for vicious Writing, or Incongruity: And tho' false *Latin* will abate a Writ, for that the Party may
C purchase

purchase a new Writ, it shall not destroy an Obligation, for the Party cannot have a new Obligation when he will. And neither false *Latin* or false *English* shall make void a Bond or other Deed when the Meaning of the Parties appears. *Yelv.* 194. 10 *Rep.* 133.

Fobem for *Fobannem* without a Dash is good; *tenerie & firmit' obligarie* has been held good, as has also *obligamus me hæredes, &c. triginti libris* for *triginta*; *sexigint'* for *sexagint'*; *septuagent'* for *septingent*; *trigintata* for *triginta*; *octogenta* for *octogint'*; *septungenta* for *septuagint'*; *octogessimo* for *octogint'*; *quinguessimis* for *quinguescent'* have been holden good. 2 *Roll. Abr.* 146. 2 *Roll. Yelv. &c.*

Quingint' duabus libris is a good Obligation for 52 l. the Condition being for the Payment of 26 l. it shall be taken as an Abbreviation of *quinguescent'*. Adjudg'd upon a Special Verdict, where the Plaintiff declared upon the Bond *de quinguescent' duabus libris*, and the Defendant pleaded *non est factum*. *Cro.* 416. The Obligation was in *Centem Libris*, and upon a *Non est factum* pleaded, &c. it was adjudg'd to be all one with *Centum*, and the Condition shewed it to be an 100 l. *Sty.* 438. And a Bond was made in *Italian*, having *sessanta libris* for *sexagint'* was adjudged good. *Cro. Jac.* 208.

But if a Man be bound in *viginti Liveris* for *Libris*, it is not good. In *viginti Libis* has been adjudg'd insufficient, because *Liba* signifies a Cake, and a Dash doth not help it. And a Man is bound in an Obligation in *Libris*, without saying how much, it's a void Obligation. *Noy.* 109. *Yelv.* 225.

An Obligation may not be made by a contrary Name of Baptism. The Administrator of *Eleanora* brings Debt upon Bond, the Defendant pleads

pleads the Intestate in her Life by the Name of *Ellen* released, &c. The Plaintiff replied *non est factum Elionoræ*, which was found so by Verdict. *Moor* 192.

In Debt against *Edmund Watkins*, alias *Edward Watkins*, the Plaintiff declar'd that he by the Name of *Edmund* was bound, &c. The Defendant pleads Payment according to the Condition, but Judgment *pro Quer'*. But by Writ of Error it was reversed, for *Edward* is bound, and *Edmund* is sued, which cannot be intended one and the same Person, and no Averment can help it: *Cro Jac.* 558.

A Man was sued for a Debt on Bond by the Name of *Jacob*; he pleads he was call'd and known by the Name of *Jaacob* and not *Jacob*, it was over-ruled. *Mod. Rep.* 107. But if a Man bind himself in a false Surname, he shall be estopped to avoid this, 3 *H.* 6. 25. And if a Man bind himself, his *Executors are bound*, though not named; but it is *not so of the Heir*; for the Executor doth more actually represent the Person of the Testator than the Heir. (The Ordinary shall be bound if he administers.) *Co. Lit.* 209. 2 *Roll. Abr.* 149.

If a Person *non Compos mentis* seal a Bond, he shall not himself avoid it; but Privy in Blood, as Heir, or Privy in Representation, as Executor, or Administrator, shall plead it in Disability. 4 *Rep.* 124.

If an *Infant* enter into an Obligation, this is voidable, but not in itself void; therefore if an *Infant* seal a Bond, and he be sued thereupon, he is prohibited to plead *Non est factum*; but it must be avoided by Special Pleading. 5 *Rep.* 119.

A Bond bears Date when the Defendant is within Age, but is sealed and delivered at full Age; the Time of making the Bond shall be adjudged when the Bond is sealed, and not the Time of the Date. *Brownl. 31.*

The Plaintiff having expended Monies for the Necessaries of an Infant, takes Bond in double the Sum, it is void; but it is said to be otherwise, if the Obligation be only taken for the very Sum laid out. *Cro. 45.* If an Infant make an Obligation, and being sued upon it, an Attorney suffers Judgment by *Non sum informatus*, without Warrant, he shall in this Case have a Writ of Error; and if he be of Age, he shall have Writ of Disceit, but not *Audita Querela*. *Winch. 114.*

An Obligation made by a *Feme Covert* is void; and she shall plead her Coverture, and conclude *non est factum*, &c. but an Infant shall not do so, as I have already observ'd, because his Bond was only voidable, and he shall conclude *Judgment si actio*, &c. If Bond be made to a *Feme Covert*, and the Husband disagree, the Obligor may plead *non est factum*; for by the Husband's Disagreement the Obligation is void: And as a *Feme-Covert* may not be bound to others, so others regularly may not be bound to her. *10 Rep. 119.*

Debt on Bond by Baron and Feme; the Defendant pleads the Wife had another Husband living. The Plaintiff replies, the Wife *ad annos nubiles* disagreed to the former Marriage, and good. *Feme Obligor* of full Age takes Baron within Age, his Age denied on Prayer, in Debt on Obligation. *Noy 69.* If a Woman seal a Bond the Day of her Marriage, before the Espousals it is good; and Coverture pleaded on that Day will not avoid it. *2 Roll. Rep. 431.* If

If Cause of Action arise before Coverture for a Debt, &c. to the Wife, by Bond or otherwise, the Husband and Wife must join in the Suit. *Keb. 440.* If a Bond be made for Payment of Money to a Femele sole, the Feme takes Husband and dies; the Debt due upon the Bond becomes not a Debt due to the Husband after her Death, but to him that Administers. *Style's Rep. 205.* But if *A.* makes a Bond to Baron and Feme, the Baron dies, the Feme administers, and brings Debt upon the Obligation as Administratrix; she dies before Judgment, and her Executor brings Debt upon the Obligation: It lies not, for it was in her a sufficient Election and Waiver. *Noy 149.*

A Bishop, Parson, Master of an Hospital, &c. cannot take an Obligation, &c. but only to their private, not politick Capacity; for no Chattels shall go in Succession, but the Executors, &c. of the Bishop, Parson, &c. will be entitled to them; unless a particular Custom enable it to go in Succession. But in Case of a Corporation aggregate of many, as Dean and Chapter, Mayor and Commonalty, &c. it is otherwise: Here it goes to the Successor, because in Judgment of Law they never die. *4 Rep. 65.* And Bodies Politick must be named by the true Name of their Corporation; and yet if the Essential Part of a Corporation be named, it is sufficient in an Action. *Brownl. Rep. 57.*

A Man cannot, it is said, bind himself to Two severally in a Bond: But a Man may covenant with two Persons severally. *March Rep. 103.* An Alien born under the Obedience of an Enemy may have Debt on Bond for personal Things. *Moor 852.*

An Obligation, tho' it wants a *Date*, or has a false or impossible *Date*, will be good. 2 Rep. But then it must be sealed and delivered. If it be a mistaken *Date* as to the King's Reign, or no King's Reign be mentioned, or a *Date* impossible, &c. the Plaintiff may surmise a legal *Date* in the Declaration, whereupon the Defendant is to answer to the Deed, and not the *Date*. *Relv.* 194. An Obligation bears *Date* in *France*, it may be sued in *England*; and it shall be alledged to be at *Issington*, &c. in *France*, &c. for it is not traversable whether there be such a Place as *Issington* or not. *Co. Lit.* 261.

The Defendant pleads to a Bond *quod factum præd.* was made and delivered *sans Date*; and afterwards the Plaintiff put a *Date* thereto, and so not his Deed; adjudged an ill Plea upon Demurrer, for the Defendant first confesseth it to be his Deed, by saying *factum præd.* *Gro. Eliz.* 800. A Declaration upon an Obligation made the last Day of *August anno*, &c. Upon Oyer of the Bond, it bore *Date 19 August*, &c. The Defendant pleads *non est factum*. The Jury find it his Deed; and Judgment *pro Quer'*: For the Count was not of the *Date*, but the Making, and the Jury have found the Deed. *Hob.* 249. One brings Debt, and declares the Defendant 5 *September Anno*, &c. made a Bond bearing *Date* the same Day and Year, and the Defendant pleads *non est factum*, and it is found that the Bond was delivered at another Day, before or after, than the Plaintiff hath declared; yet for that the *Date* is not material, Judgment shall be for the Plaintiff; and otherwise the Defendant might be twice charged, which cannot be. 2 Rep. 5. *Goddard's Case*.

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The Obligee can not alledge the *Delivery* before the Date; yet the Jury may find the Truth If an Obligation be delivered to another to the Use of the Obligee, and the same is tender'd to him, and he refuseth it; The Delivery hath lost its Force; and the Obligee can never after agree to it; wherefore the Obligor may say it is not his Deed. 5 Rep. 119. If Evidence be that a Bond is sealed to the Use of the Plaintiff, it is all one as if sealed and delivered to him. 3 Keb. 738.

In Debt upon Bond, the Defendant pleads *non est factum*; the Jury found that the Defendant caused the Obligation to be written, and signed and sealed it; and then laid it upon the Table, and the Plaintiff came and took it: It was held in this Case not to be the Defendant's Deed without other Circumstances; as if the Obligor had cast it upon the Table, and said, *This will serve*, whereupon the Obligee takes it, &c. these Circumstances will make it good. Cro. Eliz. 122. Leon. 193.

Debt upon a Bond shewing, That such a Day the Defendant became indebted to the Plaintiff, *per scriptum suum obligatorium*, without shewing the Date of the Obligation, or saying, that the Bond was sealed and delivered; it has been adjudged good enough: But the Plaintiff in his Declaration must say *de placito*, &c. *quas ei debet & injuste detinet*, &c. Mod. Ca. 306.

Obligation is dated 3 September 1 Jac. with Condition, That if the Defendant 4 Sept. 2 Jac. pay 100 l. to A. B at such a Place, and also save the Plaintiff harmless from any Suit, &c. The Defendant pleads, True it was, that he by his Obligation, bearing Date 3 Septemb. 1 Jac. did become bound in 200 l. but saith that the Obligation

gation was not delivered as his Act and Deed until the 17 Septemb^r 2 Jac. And then *primo deliberat fuit*: Upon Demurrer adjudged *pro Quer.* For the Plaintiff shews the Obligation, bearing Date, &c. *ut supra*, which is laid to be a perfect Bond, the Day as the Plaintiff counteth; and it is no good Argument for the Defendant to say it was first delivered a Year after, &c. without taking a Traverse, *absque hoc* that it was not made 3 September, &c. *Yelv.* 138.

In Action of Debt on Bond dated 18 Car. 2. to pay 300 l. in six Months next after the doing such an Act, &c. The Defendant pleads first Delivery 22 Car. 2. and that no such Act was Past 22 Car. 2. It was held, that tho' there can be no first Delivery before the Day of the Date, yet after there may. 3 *Keb.* 332. But if the Defendant plead the Delivery of a Bond after the Condition impossible to be performed, then is the Obligation become single. *Yelv.* 138.

An Obligation may not be delivered as an Escrow unto the Obligee himself, but it may be delivered as such to another for him. The Delivery of it to the Obligee himself, and his receiving it, makes it operate absolutely as a Deed in the very Instant of the Delivery; but being delivered to another to his Use, it will not have this Effect, because he is no Parry to the Deed, nor can he take any Thing by it; he receives it only as an Escrow and Instrument to deliver to the Obligee at such Time, and in such Manner as the Obligor shall direct; and if he deliver it otherwise, the Obligor may plead *non est factum*. *Style's Pr. Reg.* 222.

No Man ought to be allow'd to be a *Witness* to prove an Obligation or other Deed, which he receives in the Name of another Person; for if

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this were permitted, this would be the same as to prove a Deed or Bond made to himself. *Style's Pr. Reg.* 221.

If a Man or Woman be compelled for fear of Imprisonment to enter into an Obligation, such *Compulsion* will invalidate the Bond. If a Person Menaces me to make a Bond for 60 *l.* and I answer I will not do it, but that I will make unto him a Bond of 40 *l.* this Bond shall be adjudged by *Compulsion*. A Person is imprisoned until he makes an Obligation at another Place, and afterwards he does so, when he has his Liberty, it is by *Duress* of Imprisonment. And if I threaten you in one County to make an Obligation, and after I find you in another County, and demand it there, the Obligation is voidable, because it has respect to the first menacing. *Co. Lit.* 253. *Bac. Max.* 81. *Keilw.* 52.

It is no Plea that a Bond was made by *Duress*, by a Stranger, without making the *Obligee Party* to the *Duress*. *Keilw.* 154. But if a Stranger threaten a Man to make a Deed to a third Person, the Deed is said to be void, as if such third Person had himself actually made the threatening. 2 *Co.* 9.

The Husband may avoid the Deed that he hath sealed by the *Duress* of Imprisonment of his Wife, or Son; but not of a Servant, &c. So a Mayor and Commonalty may avoid a Deed or Bond sealed by *Duress* of Imprisonment of the Mayor. 2 *Brownl.* 276. But neither of these may do it, in Case of a Stranger, &c. The Defendant pleads that *A. B. &c.* was imprisoned, and Bond was given by him and the Defendant, for Enlargement; the Plaintiff demurred,
Judg.

26 The Law of Securities.

Judgment *pro Quer.* *A. B.* being no Father, Husband, &c. 3 *Keb.* 238.

The Party cannot plead Duress, unless it be where the Bond is actually sealed. 2 *Keb.* 630. And the Defendant pleads Duress; the Plaintiff saith he shall not be received, because on such a Day, after the Date of the Obligation, the Obligation was inrolled in Chancery, and adjudged *pro Quer'*, for in such Case the Defendant may not deny his Deed. 16 *H.* 7. c. 5.

In Action of Debt by *A. B.* Executor of *C.* the Defendant pleads *per Minas*, and after Issue join'd before the *Nisi prius*, confesses the Action; the Confession is in the *Debit* only, when it ought to be in the *Detinet*: *Per Cur'*. After the Defendant hath relinquished the Bar, the Declaration remains without Defence; and so *pro Quer'*. *Moor* 921.

A Bond may be made upon Parchment or Paper; and it may be made either in Parchment, &c. by it self, or in a Piece sewed in a Book; and it may be in the first or third Person. *Bro. Obl.* 67. The Condition of an Obligation for the Matter of it, must be to do a Thing *lawful and possible*, as to pay Money, deliver Goods, marry a Person, &c. And when the Matter or Thing to be done by the Condition is against Law or impossible, or the Condition it self is repugnant, insensible or incertain, the Condition is void; and in some Cases the Obligation also. *Co.* 10. 110, &c.

If a Thing be possible at the Time of making the Obligation, and afterwards becomes impossible by the Act of God, the Act of the Law, or of the Obligee, it is void; as if a Man be bound to appear next Term, and dies before, &c. in this or the like Case the Obligation is saved,

ved, and has no Effect. 1 *Inst.* 206. (But if a Condition in a *Feoffment* annexed to Lands be possible at the Time of making, and afterwards becomes impossible by the Act of God, &c. yet is the Feoffee's Estate absolute.) And when the Condition of a Bond for Payment of Money is made impossible in Respect to Time, as to make Payment on the 30th of *February*, &c. it is said the Money shall be paid presently.

A Man is bound in an Obligation with Condition, That the Obligor shall go from the Church of *St. Pauls* to *St. Peters* at *Rome* in the Space of four Hours, this Condition is void and impossible; but the Obligation may be good. *Co. Lit.* 206.

The Condition of a Bond is generally made in the same Deed; but it may be made in another; and sometimes it is subscribed to, and sometimes indorsed upon the Obligation. If the Words at the close of the Condition, *That then this Obligation* to be void, be omitted, the Condition is void; but it does not hurt the Obligation: But if the Words, *Or else shall stand in Force*, be omitted, neither the Condition nor the Obligation are the worse. *Cur. B. R. Paschæ* 90.

If one make an Obligation, and the Obligee endorses that 'tis his Will, That if the Obligor shall stand to the Arbitration of *A. B. C. D.* &c. then the Obligation shall be void; this Condition of the Obligee only, without the Obligor as usual, has been holden by the better Opinions to be good; for that there was sufficient Substance of a Condition; and the Obligee only is bound, &c. *Plowd.* 141.

In Debt upon Bond, the Condition was, That if *J. S.* and *J. D.* Arbitrators did make an Award on or before a certain Day; and if the
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Defendant should perform it, then the Obligation should be void: And then follow these Words, *And if they do not make an Award before the Day, &c. then I impower them to choose an Umpire, and by these Presents bind my self to perform the Award.* In this Case it was urged by the Defendant's Counsel, that what followed those Words, *Then the Obligation shall be void,* is no Part of the Condition; and if any Action be brought for Breach on that Part, it ought to be by Covenant: But the Plaintiff's Counsel pleaded that it is all but one Condition; that a Man may make several Defeasances or Conditions to defeat the same Obligation; and the Continuance of the Condition is declared by the Words, *I bind my self by these Presents.* By *Twysden, Rainsford, &c.* it is a good Part of the Condition. There was a Condition, that if the Obligor should, &c. then the Bond should be void; And further that the Obligor should Release, &c. and it was adjudged that the last was Part of the Condition. 1 *Mod. Rep.* 274, 275.

If the Condition of a Bond be against Law, the Bond it self is void. But the Law makes a Distinction between a Condition against Law, for the doing of any Act *malum in se*, and a Condition against Law repugnant to the State, or some Rule in Law. As to the doing Acts *malum in se*, if a Man be bound upon Condition to kill another Person, the Bond is void; and the Condition shall have no Effect to gain any Thing by doing it. *Co. Lit.* 206. *Plowd.* 34. A Dyer was bound not to Exercise his Trade for two Years, and the Obligation was held against the Common Law; and if a Husbandman be bound not to Till or Sow his Ground, the Obligation is contrary to Law, and void. 11 *Co.* 55.

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When *several Persons* are bound in a Bond severally, the Obligee may sue all the Obligors together, or all of them apart; (but not some of them jointly and not the rest) and have several Judgments and Executions; but Satisfaction shall be but once had, for as soon as that is had, if it be of one only, it is a Discharge of the rest: But in a *joint* Obligation, if one be sued, he is not obliged to answer, unless the rest are sued also; tho' if he appears and shews it not, the Jury will find against him, and he will be charged with the whole Debt: It is the same also, if the other be outlawed, insufficient, &c. *Dyer* 19. 310. 5 Co 119.

Where two or more be jointly bound, they are to be sued together, unless some of them are Infants, Women Covert, or otherwise incapable. And where there is a Condition to do an Act to two jointly, if one of them die before the Act is performed, it must be done to the Survivor. A Condition is made to pay 100 l. to A. and 100 l. to B. if A. dies before the Day of Payment, and the Obligation is made to A. and B. B. shall have the whole, and A's. Executors be entitled to none. *Dyer* 350.

If *several Days* are mentioned for Payment of Money, the Obligation is not forfeited, nor shall Action of Debt be brought until all the Days are past: But if a Man be bound in a *Recognizance*, after the first Day of Payment, he shall have Execution for that Sum. *Co. Lit.* 292. The Case is the same of a Covenant or Promise, after the first Default Action will lie. And it is said in some Cases, an Obligee may sue for Money due by the Obligation presently, tho' it be not forfeit. 8 Co. 153. *F. N. B.* 267.

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If a Condition be for the Payment of Money, or doing such an Act, on *such a Time*, &c. It is no Plea to say that the Obligor did pay it; but he must shew at *what Time*, or else it may be taken that the Performance was after the Time limited. *Noy Max.* 15. And Robbery or other Hindrance will not in strictness save the Obligation; but it is forfeited, if the Performance of the Condition, in respect to Time, &c. be not punctually observed. *Bro. Obl.* 9.

In Bonds, wherein *no Time is limited* for Payment of Money, &c. the Debt is due presently, and ought to be presently tendered; but the Justices have a discretionary Power to limit a Time, with regard to the Distance of Place, and the Time wherein it may be done. The Money is to be paid in convenient Time, if the Act be not tied to a certain Place; for if the Act be to be performed at a certain Place, as to go to *Rome*, &c. and the Obligor is to do the sole Act without Appointment of Time for its Performance, it is said the Obligor shall have Time during Life to do it; and no Request will hasten it, except the Concurrence of the Obligor and the Obligee are both necessary for doing of the Act. *1 Inst.* 208, 219. *1 Roll. Abr.* 437.

If the Time for performing a Condition be limited, it must be duly observed: But if no Time be set down for the doing of it, there regularly the Party that is to do it, shall have Time during Life, unless he be requested to do it by the other Party, and fixes the Time upon his Request; for then it must be done at that Time: And if upon Request he fixes no Time, it must be done in a convenient Time after the Request; and in these Cases Request is necessary, otherwise

wife the Condition cannot be broken. *Dyer* 311.
6 Co. 31.

If a Man be bound in an Obligation to pay a Sum of Money at such a Time, and *no Place be limited* for the Payment of it, the Obligor ought to find the Obligee, if he be in *England*, and tender the Money at the Day, &c. *Co. Lit* 211. (It is the same in the Case of a Mortgage, &c. but not of a Lease; for then it must be tender'd on the Land.) But if the Obligor at or after the Day of Payment, meets with the Obligee, and offers to tender him the Money, but he goes away to prevent the same, the Obligor will be excused from forfeiting the Penalty of his Bond, by Reason he has used his Endeavours to perform the Condition. 8 E. 4.

Tender of Money by the Obligor, or his Servant by his Commandment, &c. will be a good Performance of the Condition, if refused by the Obligee, unless it be made to a Stranger, &c. for a Man may impower another to receive Money due to him upon a Bond; yet if the Obligor be afterwards sued, he must plead that he is still ready to make Payment, and tender it in Court. *Co. Lit.* 208, 209. And pending an Action, the Defendant may bring in Principal, Interest and Costs, and the Court shall discharge him. In Case of Tender of Goods, on Condition, &c. if the Obligee refuse, he is without Remedy, and hath lost the same for ever.

If the Plaintiff will not receive Money tendered in Court, but take Issue upon the Tender, and it is found against him, he hath lost his Money for ever. And Tender of Money may be made in Purfes or Bags, without shewing or telling it; for it is the Part of the Receiver to put it out and tell it. *Co. Lit.* 207, 208.

Payment of Money to a Scrivener, &c. is a legal and sufficient Payment, if the Scrivener have the Bond in his Custody : But is said, if a Scrivener is generally imployed to place Money out at Interest, and the Moneys are paid to him; if he breaks, the Payment shall not excuse the Party : But if he receive this by Command, in this Case the Party shall have good Cause of Equity to be excused. 3 Keb. 471.

Condition for the Payment of Money at *Michaelmas*, without saying what *Michaelmas*, shall be taken the *Michaelmas* next following the Date of the Bond. *Trin. 8 Car.* A Bond was dated in *March*, and the Condition was for Payment upon the 28th Day of *March* next following, the Money is payable the same Month, if the 28th Day be after the Date; and not the Month of *March* next Year. But there was this Difference made, that *sequentem* refers to the Day of the same Month; but *sequentis* would refer to the Month, and then it would have been payable the next Year. 1 Roll. Rep. 442. 1 Mod. Rep. 112.

Condition to pay 10 l. at *Michaelmas*, and 10 l. every Year after, until the Obligee, &c. is advanced to Peerage, &c. If he be made a Peer before *Michaelmas*, yet the first 10 l. Payment must be made to the Obligee, 39 Eliz. C. B.

The Condition of a Bond is to pay 20 l. of lawful Money of *Great Britain*; if the Obligor pays the Money in *French*, *Spanish*, or other current Money by Act of Parliament or Proclamation, this will be a good Performance of the Condition. But a Payment in Farthings, it is said, is no good Payment. 1 Inst. 207. 2 Inst. 577.

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In all Cases when the Condition of a Bond is not performed, the Obligation becomes forfeited: And yet if the Obligee only is the Cause of the Breach of the Condition, or if he is to do the first A&t, and will not do it; or the Thing to be done by the Condition becomes impossible, &c. the Obligation is not forfeited, but discharged for ever. 1 *Inst.* 206. 1 *Roll. Abr.* 449, 450, &c.

Where the Condition of an Obligation consists of two Parts in the *Disjunctive*, and both being possible at the Time of the Obligation made, afterwards one of them becomes impossible (by the A&t of God, &c.) the Obligor is not obliged to perform the other Part; for the Condition is intended for the Benefit of the Obligor, that he might have his Election to perform the one or the other, for saving the Penalty of the Bond. But it will be otherwise if one Part of the *Disjunctive* was not possible to be performed at the Time of the Bond made, and the Time for the Performance of the Condition. 5 *Rep.* 22.

When a Condition is *doubtful*, it is always taken most favourably for the Obligor, and against the Obligee; yet so that a Construction reasonable shall be made, according to the Intent of the Parties, as near as may be. *Dyer* 14. 51.

If a Condition be, that the Obligor shall marry *E. D.* &c. and the Obligee marries her before the Time limited; the Obligation, by Reason the Performance was hindered by the Obligee, is discharged. Where two Things are mentioned to be done, as to do *so or so*, and not *so and so*, the doing of either of them performs the Condition. And if there be a Condition for Appearance in Court at a Day, the Obligee must cause his Appearance to be entered on Record, other-

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wife the Obligation is forfeit. 21 E. 3. *Perk. sect.* 760. 2 E. 4.

In the Case of *Warner and White*, the Condition was, That *J. S.* should pay such a Sum upon the 25th of *December*, or should appear in *Hilary* Term after, in the Court of King's Bench; *J. S.* died after the 25th Day of *December*, and before *Hilary* Term; and had paid nothing upon the 25th Day of *December*: In this Case the Condition was not broken by the Non-payment; and the other Part is become impossible by the Act of God. 5 Co. 22. By Justice *Atkins*, if a Man make a Bond to render himself a Prisoner, it is void; but if it had been to pay the Money, or appear at the Return of the Writ, it had been good. 2 *Mod. Rep.* 305.

If a Man pay Money due upon a Bond *before the Day* of Payment, it is a good Discharge of the Bond; it being a Duty presently. The Defendant pleads Payment at the Day and Place according to the Condition, upon which the Parties are at Issue; the Jury find he paid it before the Day, and at another Place, and the Plaintiff accepted it: Verdict was found for the Defendant, for Payment before the Day, is adjudged Payment at the Day. 1 *Leon.* 311. 1 *And.* 233.

If a Condition be to pay a Sum of Money *citra* such a Feast, it ought to be paid on the Eve of the said Feast: It is the same if it is to be paid *ante Festum*, &c. but if it be to be paid *in Festo*, it must be made on the Feast-Day. 1 *Roll. Abr.* 442. Condition of a Bond upon an Adventure to *Newfoundland*, to pay so much Money within forty Days next after the Ship shall make her first Return from thence to the Port of *London*, &c. or any Port where she shall unlade her Goods;

Goods; the Obligor is to pay the Money within forty Days after the Arrival of the Ship, and shall not have forty Days after the unlading of the Goods; for this is not for Freight, but on an Adventure; and the unlading of the Goods is only mentioned to describe the Haven where the Arrival shall be, &c. But it might be some Doubt, if the unlading was not within forty Days. 1 Roll. Abr. 442. Style 30.

In Action of Debt, the Defendant pleads he paid the Money such a Day, whereas the Case was, There were two Days of Payment limited in the Obligation, and the Money was paid, Part on one Day, and the rest on the other, not all on one Day: The Plaintiff replies, he did not pay the Money at the Day, &c. and Judgment *pro Quer.* In Arrest of Judgment, *per Rolle*, if you have two Days of Payment to plead, and you rely upon one Day in your Pleading, whereupon Issue is joined upon it, and it is found against you, you shall be barred. Style 93.

If *A.* be bound in an Obligation of 20 *l.* to *B.* with Condition, that if *B.* shall bring *twenty Load of Wood* to the House of *A.* that *A.* shall pay him the 20 *l.* or that *A.* shall pay him 20 *l.* when *B.* shall bring twenty Loads of Wood, &c. These are good Conditions, and the Thing must be done before the Money is paid. 2 Brownl. 98.

The Condition of a Bond is to pay 10 *l.* to such a Person as the Obligee shall Name by his last Will; and after the Obligee names none by his Will, the Obligor is not bound to pay this to the Executor; for the Condition hath Reference to the Nomination. 1 Roll. Abr. 421. A Condition to pay to *A.* and his Assigns 100 *l.* the Declaration was, that the Defendant had not paid this to *A.* to which Exception was taken, and

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adjudged to be good,, for that he might have paid it to his Assigns. 2 Sid. 41. If I am bound to pay Money to two Persons actually, it is said I am to pay this but to one; because I cannot pay one and the same Sum to two several Persons at one and the same Time. 2 Sidf. 41 *Abbot's Case*.

A. is bound in an 100 *l.* to *B.* with Condition, That if *A.* the Obligor did *not* pay, &c. then the Bond to be void, &c. The Defendant pleads that he had *not* paid the Money, and so the Obligation was avoided: This was not the Intent of the Obligation, it is very plain, because it is contrary to the Nature of all Obligations; but Judgment was given according to the *Parport of the Words*. 1 Roll. Abr. 419.

If a Bond be of *twenty Years standing*, and no Demand be proved thereon, or good Cause of so long Forbearance be shewn to the Court, upon a *solvit ad diem* it shall be intended paid; a *fortiori*, upon a Note, if it be for any considerable Sum, *per Holt Ch. J. Mod. Ca. 22*.

One Bond cannot be given in Satisfaction of another, by the same Person; but it may by another. In *Blythe and Hill's Case*, the Plaintiff brought an Action of Debt upon a Bond against the Defendant as Heir to the Obligor. The Defendant pleaded that the Obligor, his Ancestor, died Intestate, and that one *J. S.* had taken out Letters of Administration, and had given the Plaintiff another Bond in full Satisfaction of the former. Upon this, Issue being joined, it was found for the Defendant. It was said in this Case, that one Bond might be taken for another: But if the second Bond had been given by the Obligor himself, it would not have discharged the former. 1 Mod. Rep. 225.

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If a Man bindeth himself and his Heirs in an Obligation to pay a Sum of Money at a *certain Day*, and dieth; it is at the Election of the Obligee to sue *either the Heir or Executors* of the Obligor; and if the Executors have Assets in their Hands, yet may the Heir be sued by the Obligee, because he is bound by the Bond; and the Heir must plead *Riens* by Descent. *Plowd.* 440. If a Man make a Bond, and bind his Heirs, but not himself, to pay a Sum of Money, the Obligation is void: For the Heir shall not be bound, but where the Ancestor was bound. *Co. Lit.* 386. If an Obligation be made to one and his Heirs, &c. the Executors, &c. shall have the Advantage of it, and not the Heir, by Reason 'tis a Chattel. *Dyer* 14.

A Release of the Debt discharges the Obligation, if it be made in full Satisfaction, tho' but Part of the Money be paid: And an Obligor is discharged by being made Executor, &c. or by marrying a Wife to whom the Money is due. *Bro. Ob.* 62. *8 Co.* 136.

If a Man be bound to another in a certain Sum for the Payment of Money at a certain Feast next ensuing, and the Obligee before the Feast, releases to the Obligor all Actions, he shall be barred of the Duty for ever; and yet he could not bring an Action at the Time of the Release made. But if a Man covenant to build a House, or make an Estate, &c. and before the Covenant broken, the Covenantee releases all Actions, &c. this does not discharge the Covenant it self, because at the Time of the Release there was no Debt or Duty, or Cause of Action: But a Release of all Covenants is a good Discharge. *Co. Lit.* 292.

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If a Condition be for Payment of 20 *l.* the Obligor or Feoffor cannot at the Time appointed pay a lesser Sum in Satisfaction of the whole ; for it is apparent that a lesser Sum of Money cannot be a *Satisfaction* of a Greater. But if the Obligee, &c. do at the Day receive Part, and thereof make an Acquittance under his Seal in full Satisfaction of the whole, this shall be good, by Reason the Deed amounts to an Acquittance of the whole : And if the Obligee pay a less Sum, either before the Day, or at another Place than is limited by the Condition, and the Obligee receives it, this will be good Satisfaction. *Co. Lit.* 212.

There is a Diversity where a Condition is for Payment of Money, and when for Delivery of any Thing, as a Horse, &c. for where it is for Payment of Money, there if the Obligee, &c. accept an Horse in Satisfaction, this is good : But if the Condition were for Delivery of a Horse, &c. in this Case, the Acceptance of Money or any other Thing for the Horse, &c. is esteemed no Performance of the Condition. *Co. Lit. ibid.*

And when the Condition is for Payment of Money, there is a Diversity when the Money is to be paid to the *Party*, and when to a *Stranger* : If it be to be paid to a *Stranger*, and such *Stranger* accept a Horse, or any collateral Thing in Satisfaction of the Money, it is no Performance of the Condition ; because the Condition in that Case is strictly to be performed : But if the Condition be, that a *Stranger* shall pay to the Obligee, &c. a Sum of Money ; there the Obligee may receive a Horse, &c. in Satisfaction and Performance of the Condition. *1 Inst.* 212.

In *Pleading*, there is a Diversity between the Negative and the Affirmative ; between a Con-
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dition to do a collateral Act, and where it is to pay Money, &c. between a Condition Copulative and Disjunctive; Payment or Performance by or to a Stranger, and by or to the Obligor or Obligee; where an Obligation is void, and where voidable. Between a Condition void by the Common Law, and the Statute Law, &c. *Law. Obl. 390.*

If a Man be bound to perform all Covenants, &c. if all are in the Affirmative, he may plead general Performance of all; but if any are in the Negative, to so many he ought to plead Specially (for a Negative cannot be perform'd) and to the rest generally. If any of them are in the Disjunctive, he ought to shew which of them he hath performed; and if they are to be done of Record, he must shew this Specially, and not in general. And if a Man plead in the Affirmative, as Condition to perform such a Will, &c. he must not only set forth the Will, and plead he has performed it; but he must say how. In other Cases the same is requisite, &c. *Lit. Rep. 2.*

The express Certainty is to be pleaded, according to the express Words of the Condition: A Man is bound with Condition to warrant Land, the Defendant shall say expressly, that he had warranted the Land. In pleading Negatively, all the Condition is to be traversed; as if a Man be bound to pay for so much Bread as the Defendant shall deliver at such a Place, &c. when ever he shall be requested by the Obligee: He shall say he was not requested by the Obligee to pay to him any Money for Bread delivered at the Place, &c. *4 H. 7. Dyer 42.*

A Duty by Obligation, &c. ought to be avoided by Matter of as high a Nature, viz by Deed. A Special Plea in Bar is always to be answered

with a special Replication in the Point. After Imparance one cannot plead in Abatement of the Writ. *Styl.* 187. Agreement to pay Part, and Promise to pay the rest, is no Plea to a Bond. In Debt on an Obligation, the Defendant pleads, *solvit ad diem, & de hoc ponit, &c.* where it should be *hoc paratus, &c.* for then the Plaintiff should have replied, *non solvit; Et hoc petit, &c.* so that there would be an Affirmative and a Negative: *Per Cur'*, as the Plaintiff joins Issue, and the Jury find he hath paid, it is good; and Judgment shall not be arrested. *Cro. Car.* 316. In Debt upon Bond, if the Defendant *before Action brought* hath paid the Principal and Interest, he may plead the Payment in Bar, *&c.* 4 & 5 *Ann.*

In Debt on Bond, the Defendant pleads a Release, and found against him; in Arrest of Judgment, it was adjudged for the Plaintiff, because the Defendant did not first take Advantage of it as he might, but waved it, and pleaded a collateral Matter, which was found against him. *Cro. Eliz.* 68. *A. B.* makes an Obligation dated and delivered on the first of *May*, and the first of *June* following the Obligee makes a Release to the Obligor, dated *March 1.* by which he releaseth all Actions, *&c.* until the Date of the Release; *Per Cur'*, the Obligation is not released. *Cro. Eliz.* 14.

Where two Persons are bound jointly and severally, a Release to one Obligor is a Discharge to the other; but a Release to the Executor of a joint Obligor will not avail, *Cro. Car.* 551. If two are bound jointly and severally to me, and I sue them jointly, I may have a *Capias* against them both, and the Death or Escape of the one shall not discharge the other; but I cannot have

a *Capias* against one, and another Kind of Execution against the other ; because tho' they are two several Persons, yet they make but one Debtor when I sue them jointly : But if I sue them severally, I may sever them, and have different Executions, &c. *Hob. 59.*

If one be arrested and puts in *Bail*, and after the Plaintiff recovers, and the Defendant renders not himself according to Law in Safeguard of his Bail, the Plaintiff may at his Election take Execution against the Principal or Bail : But if he arrests the Bail, tho' he had not full Satisfaction, yet he shall never afterwards meddle with the Principal. If two be Bail, and one is in Execution, he may also take the other ; but if the Principal be in Execution, he cannot take the Bail. *Cro. Jac. 320.* When the Plaintiff in the Action hath Judgment, he shall have Election to sue a *Scire Facias* against the Principal upon the Judgment, or against the Bail and Principal jointly upon a Recognizance.

One is bound with another as his Surety jointly and severally, they are both Principals. A Condition to save harmless in a Counter-Bond, the Defendant paid not the Money at the Day ; this is a present Forfeiture of the Counter-Bond, by Reason he hath put the other in Danger of being arrested, and it is a present Damage. 3 *Bulst. 233.*

If a Condition be to discharge another against *A. B.* of an Obligation wherein he is bound ; it is not sufficient to save him harmless, but he ought to discharge him of the Obligation, by Release or otherwise. The Defendant pleads *non damnificatus* ; the Plaintiff replies the Money was not paid at the Day, *per quod* the Plaintiff became *onerabilis*, and durst not go about his Affairs ;

Affairs; the Defendant rejoins, that the Money was tender'd and refused, *absque hoc* that the Plaintiff was chargeable; the Plaintiff demurs, here need not be alledged any special Damage; but the saying he could not attend his Business is sufficient. Judgment *pro Quer.* 3 Keb. 336. One who is Surety may pay the Money, and have the Bond decreed to him in Chancery, to make his Advantage. *Latch.* 170.

A Condition to acquit, discharge, and save harmless of several Bonds entered into by the Plaintiff with the Defendant; and of all Suits and Troubles which may happen thereupon; the Defendant pleads Performance; the Plaintiff replied he was sued, and forced to retain an Attorney, and that the Defendant had not acquitted him; the Defendant demurs, because the Plaintiff had not alledged particular Notice to him of the Suit. *Per Cur.* He is not bound to give Special Notice. *Sid.* 442.

As to Notice requisite to be given upon an Obligation; regularly it is not necessary to give Notice where one is bound to do an Act by Bond. A Condition is made to pay 10 l. at the Day of Marriage of the Obligee; the Obligee is not bound to give Notice to the Obligor of the Day of his Marriage; but the Obligor must take Notice at his Peril, for he hath taken upon him to pay it at the Day. 1 Roll. Abr. 461. A Man is bound to A. B. to pay him 1000 l. after that he hath married his Daughter. A. B. marries her, and brings Debt upon this Bond; and it was not averred that he had given Notice of the Marriage, but demanded the Money. Here is no Need of Notice; for the Request implies it. 2 Car. *Hodges & Moor.*

A. was bound in 100 *l.* Bond to *B.* for the faithful Service of his Son Apprentice with *B.* and *B.* in the Obligation raseth out *Libris*, and puts in *Marcis*; this is *not Forgery* punishable, because it is no Prejudice to any but himself; and by that the Obligation is void. *Noy.* 99.

In all Cases, when the Obligation was once a Deed, and after before Action brought becomes no Deed, either by *Rasure*, Addition, Alteration, taking off the Seal, &c. the Defendant may plead *non est factum*; for at the Time of the Plea, which is in the present Tense, it is not his Deed. 5 *Rep.* 119.

When any Bond is alter'd in a Point material by the Plaintiff himself, or by any Stranger without the Privy of the Obligee, be it by Addition, Rasing, Interlineation, or drawing a Pen through the midst of any Word; by this the Deed becomes void: As if one be bound in 10 *l.* and after Sealing 10 *l.* is added to the Penalty, it is void: So if the Obligee himself alter the Deed by any of the said Ways, tho' it be in Words not material, yet the Deed is void: But if a Stranger without his Privy alter it in a Place not material, it shall not be void; *Winchcomb's Case*. If it be rased in the Date, after the Delivery, it goes through the whole. 5 *Rep.* 23. If two are bound in a Bond, and the Seal of one is broken off, this Mifeazance, *ex post facto*, 'tis said, shall avoid the Deed against both. 11 *Rep.* 27.

If an Obligation depends upon, or is necessary to some other Deed, and the Deed becomes void, the Obligation is also void. By Statute 33 *H.* 6. c. 10. Obligations of any Person in Ward for Appearance at the Day mentioned in the Writ, &c. are void, if not made to the Sheriff,

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Sheriff, and in such Manner as by this Statute is appointed. The 5 *Ed. 6. c. 16.* makes void all Bonds that concern the buying and selling of publick Offices. By 13 *Eliz. c. 5.* Bonds made to avoid the Debt or Duty of others shall be void, as to the Party whose Debt or Duty is endeavoured to be avoided. The Statute 14 *Eliz.* invalidates all Bonds with Conditions for enjoying Spiritual Livings contrary to Law, relating to Simony, &c. By 16 *Car. 2. and 9 Ann.* all Bonds and other Securities obtain'd by Gaming are declared void ; as are also Bonds upon excessive Usury by 12 *Ann. &c.*

As to *Usury*, the 12th *Ann.* enacts, that no Person shall take for the Loan of any Money, Wares, &c. above the Value of 5 *l.* for the Forbearance of 100 *l.* for a Year, on Pain that all Bonds and Contracts to the contrary shall be void ; and the Receiver shall forfeit treble the Value of the Money, &c. lent. And Scriveners, &c. taking above 5 *s.* for procuring the Loan of 100 *l.* for a Year, or above 1 *s.* for making of the Bond or Bill shall forfeit 20 *l.* for every Offence, with Costs of Suit, and suffer Half a Year's Imprisonment. But a Contract for 6 *per Cent.* made before this Statute is not within the Meaning of it : And formerly, when Money was more scarce, 6, 8, and 10 *l. per Cent.* were declar'd legal Interest.

A. B. lent *C. D.* 100 *l.* for a Year, and took an Obligation for 10 *l.* Interest (Money being then at 10 *l. per Cent.*) *Per Cur.* It is not Usury. An Agreement to pay double the Sum borrow'd, &c. by Way of Penalty, on Non-Payment of the principal Debt at a Day limited, is not within the Statute ; for this is only a Penalty for Damages, which the Obligor may avoid by Repay-

Repayment of the Principal at the Time agreed.
2 Roll Abr. 801, 802.

It is not Excessive Usury, if the Interest exceeds 5 per Cent when possibly the Principal and Interest are in Hazard upon any Contingencies; or where there is a Hazard that one may have less than his Principal: As upon a Bond with Condition of Payment of a large Sum, upon Return of a Ship from the Indies, &c. 2 Cro. 208, 209. Show. Rep. 8.

Mistakes of Scriveners, &c. shall not avoid a fair Agreement; if they draw a Bond, in such Manner as to bring it within the Statute against Usury: Neither shall the Receipt of the Interest before the Time, for the Conveniency of the Creditor, &c. without any usurious Contract, make the Receiver liable to the Forfeiture of the treble Value; or if the Lender accepts of a voluntary Gratuity from the Borrower upon Payment of Principal and Interest, there being no particular Agreement for it, &c. 2 Cro. 677. 3 Cro. 501.

A Common Condition of a Bond.

The Condition of this Obligation is such, That if the above-bound A. B. his Heirs, Executors, or Administrators, do and shall well and truly pay or cause to be paid unto the above-nam'd C. D. his Executors, Administrators, or Assigns, the full Sum of One Hundred Pounds of lawful British Money, with Interest for the same, after the Rate of, &c. per Cent. per Annum, (or with lawful Interest for the same, &c.) on the Day of, &c. next ensuing the Date of the above-written Obligation; then this Obligation to be void, or else to remain in full Force.

A Condition for Payment of Money at several Days.

The Condition of this Obligation is such, That if the above-bound *A. B.* and *C. D.* or either of them, their, or either of their Heirs, Executors, or Administrators, or any of them, do and shall well and truly pay or cause to be paid unto the above-named *E. F.* his Executors, Administrators, or Assigns, the full Sum of One hundred Pounds of lawful *British* Money, in Manner following, viz. the Sum of 25 *l.* Part thereof on the first Day of *September* next ensuing the Date above-written, 25 *l.* more thereof on *&c.* then next following, and 50 *l.* more, Residue and in full Payment thereof on, *&c.* which will be in the Year of our Lord, *&c.* without Fraud or Co-*vin*, then this Obligation to be void; but if Default shall be made of or in Payment of any of the said several and respective Sums of Money above-mentioned, or any Part thereof, on any of the said several and respective Days and Times above-limited for Payment of the same; then this Obligation to remain in full Force.

A Condition to pay Money Quarterly.

The Condition of this Obligation is such, That if the above-bound *A. B.* his Heirs, Executors, or Administrators, do well and truly pay or cause to be paid unto the above-named *C. D.* his Executors, Administrators, or Assigns, the Full Sum of One hundred Pounds of lawful *British* Money in Manner following; (that is to say) the Sum of 10 *l.* thereof on, *&c.* being the Feast of, *&c.* next ensuing the Date of the above-written Obligation; the Sum of 10 *l.*
more

more thereof on, &c. being the Feast of, &c. then next ensuing; the Sum of 10 l. more thereof on, &c. which will be in the Year, &c. the Sum of 10 l. more thereof on, &c. And so quarterly every Quarter of a Year, one next and immediately ensuing another, on every of the Feasts or Quarter-Days aforesaid, the Sum of 10 l. until the said Sum of 100 l. shall be in such Manner fully satisfied, contented and paid. That then, &c. But if Default shall be made of or in the Payment of the said Sum of 100 l. or any Part thereof in Manner above-mentioned, then, &c. or else, &c.

A Condition of a Counter-Bond, where one Man is bound for another.

The Condition of this Obligation is such, That whereas the above-named A. B. at the Special Instance and Request, and for the only proper Debt of the above-bound C. D. together with him the said C. D. is in and by one Bond or Obligation, bearing equal Date with the Obligation above-written, held and firmly bound unto E. F. of, &c. in the penal Sum of Two Hundred Pounds of lawful *British* Money, conditioned for the Payment of the Sum of 100 l. of like lawful Money, with Interest for the same, after the Rate of, &c. *per Cent. per Annum*, on &c. next ensuing the Date of the said recited Obligation, as in and by the said recited Obligation and Condition thereunder written may more fully appear. If therefore the said C. D. his Heirs, Executors, or Administrators, do and shall well and truly pay, or cause to be paid unto the said E. F. his Executors, Administrators, or Assigns, the said Sum of One hundred

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hundred Pounds, with Interest for the same, after the Rate of, &c. on the said Day, &c. next ensuing the Date of the said recited Obligation, according to the true Intent and Meaning, and in full Discharge and Satisfaction of the said recited Obligation : Then, &c. or else, &c.

A Condition to pay Money according to a Deed of Mortgage.

The Condition of this Obligation is such, That if the above-bound *A. B.* and *C. D.* or either of them, their or either of their Heirs, Executors, Administrators, or Assigns, do and shall well and truly pay, or cause to be paid unto the above-nam'd *E. F.* his Executors, Administrators, or Assigns, the full Sum of, &c. in and upon, &c. next ensuing ; and also the further full Sum of, &c. in and upon, &c. which will be in the Year of our Lord, &c. without any Deduction or Defalcation for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary, according to the Purport of certain Indentures Tripartite, bearing equal Date with these Presents, and made between the said *A. B.* and *C. D.* of the first Part, *E. F.* &c. of the second Part, and the above-nam'd *G. H.* &c. of the third Part ; then &c. or else, &c.

A Condition to Redeem a Gold-Watch pawn'd, &c.

The Condition of this Obligation is such, That whereas the above-named *A. B.* hath receiv'd of the above-bound *C. D.* one Gold-Watch, or Diamond-Ring, &c. made by, &c.

to be kept by the said *A. B.* as a Security for the Sum of, &c. now advanc'd and lent to the said *C. D.* by him the said *A. B.* If therefore the said *C. D.* his Executors or Administrators, do well and truly pay or cause to be paid unto the said *A. B.* his Heirs, Executors, or Assigns, the full Sum of, &c. for the redeeming of the said Gold-Watch, &c. in and upon, &c. next ensuing the Date above-written : Or in Default of such Payment of the said Sum, &c. at the Time above-limited, if the said *C. D.* his Executors and Administrators, do and shall permit and suffer the said *A. B.* his Executors and Administrators, peaceably to enjoy to his and their own proper Use and Uses the said Gold-Watch, &c. for the Debt aforesaid ; then, &c. or else, &c.

A Condition to pay a Sum of Money at the Day of Marriage, or the Day of Death.

The Condition of this Obligation is such, That if the above-bound *A. B.* his Executors, Administrators, and Assigns, do well and truly pay or cause to be paid unto the above-named *C. D.* his Executors, Administrators, or Assigns, the Sum of 100 l. of, &c. within Six Months next after the Solemnization of the Marriage of the said *A. B.* or the Time of the Death and Decease of him the said *A. B.* which of them shall first and next happen after the Date of the above-written Obligation ; then, &c. or else, &c.

A Condition for the Payment of Money at the End of an Apprenticeship, or on the Day of Marriage.

The Condition of this Obligation is such, That whereas the above-bound *A. B.* by Indenture of Apprenticeship, bearing Date, &c. hath put himself Apprentice unto, &c. with him to dwell and serve as his Apprentice, from, &c. unto the full End and Term of, &c. from thence next ensuing, and fully to be compleat and ended, as by the same Indenture of Apprenticeship more at large appears: And whereas the above-named *C. D.* hath before the Day of the Date hereof at several Times lent to and disbursed for the said *A. B.* several Sums of Money for which he the said *C. D.* is content to take his Bond for, &c. payable at the Expiration of the Apprenticeship of the said *A. B.* as aforesaid, or the Day of Marriage of the said *A. B.* which of them shall first and next happen. If therefore the said *A. B.* his Heirs, Executors or Administrators, or any of them, do well and truly pay or cause to be paid unto the said *C. D.* his Executors, Administrators, or Assigns, the full Sum of, &c. at the End and Expiration of the said Apprenticeship of the said *A. B.* or Term of &c. Years above-mentioned, or at the Day of Marriage of the said *A. B.* which of them shall first and next happen to be or come after the Date of the above-written Obligation; then, &c. or else, &c.

A Condition to pay Money upon an Adventure, on the Return of a Ship at Sea, &c.

Whereas the above-named *A. B.* hath at the Request of the above-bound *C. D.* paid unto him the said *C. D.* the Sum of, &c. (or sold and delivered one Diamond-Ring, &c.) and is contented on the Conditions hereafter-mentioned to bear the Hazard and Adventure thereof in the good Ship called, &c. now bound out upon a Voyage to, &c. and from thence back to the Port of *London*. Now the Condition of this Obligation is such, that if the said *C. D.* his Executors, Administrators, or Assigns, or any of them, shall in Consideration of the Premises well and truly pay or cause to be paid unto the said *A. B.* his Executors, Administrators, or Assigns, the full Sum of, &c. of lawful Money, &c. within twenty Days next after the said Ship shall first and next arrive in the River of *Thames*, &c. from the said Voyage, &c. then, &c. or else, &c.

[Assignments of Bonds, see Judgments.]

Of RECOGNISANCES, Statutes, &c. and Assignments of them.

A Recognisance is a Bond or Obligation of Record. The Debtor, or he that enters into the Statute or Bond, is called the Recognisor,

nisor, or Conusor ; and the Person to whom it is made, is called the Recognisee or Conusee.

A Statute is also a Bond of Record ; and of Statutes there are three Kinds ; a Statute-Merchant, a Statute-Staple, and a Recognisance. A Statute-Merchant was contriv'd for the Security of Merchants only ; but at this Time it is us'd by others, and is become one of the common Assurances of the Kingdom. A Statute-Staple was first invented for Merchants and Merchandize of the same Staple ; (All Bonds due to the King are in Nature of Statutes-Staple, 33 H. 8.) And a Recognisance is said to be a Statute-Staple improperly so call'd, testifying upon Record that the Recognisor doth owe to the Recognisee a Sum of Money.

A Statute-Merchant is acknowledg'd before a Clerk of the Statutes-Merchant, and the Lord Mayor of the City of *London*, &c. And a Statute-Staple is acknowledged before the Mayor of the Staple, in the Presence of Constables of the same Staple ; by Virtue of which Statute-Staple the Creditor may forthwith have Execution of the Body, Lands and Goods of the Debtor upon Non-Payment, &c. The Acts of Parliament relating to Recognisances, Statutes-Merchant, &c. are 13 Ed. 1. 27 Ed. 3. 23 H. 8. &c.

By 13 Ed. 1. It is enacted, that the Merchant that will be sure of his Debt is to cause his Debtor to come before the Mayor of *London*, *York*, or *Bristol*, or before such Mayor and Clerk as the King shall appoint, to acknowledge the Debt and the Day of Payment ; which Recognisance shall be entered in a Roll. The Clerk is to make out a Bill obligatory, whereunto the Seal of the Debtor shall be affixed, together with
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the King's Seal ; which Seal, purposely appointed, shall remain in the keeping of the Mayor and Clerk. If the Debtor fail in Payment at the Day, upon Notice thereof to the Mayor and Clerk, they are to cause his Chattels, &c. to be sold by Appraisement to satisfy the Creditor what his Debt amounts to, and the Money without Delay is to be paid to such Creditor ; In Case they cannot sell the Goods, they shall cause so much of the Moveables to be deliver'd to the Creditor as will answer the Debt, and the King's Seal shall be put to the Sale and Deliverance.

If the Debtor have no Moveables within the Mayor's Jurisdiction, the Recognisance is to be sent to the Lord-Chancellor under the King's Seal, and he shall thereupon direct a Writ to the Sheriff in whose Bailiwick the Moveables of the Debtor are ; who must proceed therein as the Mayor might have done, if the said Moveables had been in his Jurisdiction. If the Appraisers value the Goods too high, they may be compell'd to take them at the Price, and shall forthwith be answerable to the Creditor for his Debt. If the Debtor have no Moveable Goods, whereupon the Debt may be levied, he shall be imprison'd, and there remain until he agree with the Creditor ; being allow'd only Bread and Water by the Creditor : And if the Debtor have Sureties, they shall be proceeded against in like Manner as the Debtor ; but so long as the Debt may be levied of the Goods of the Debtor, the Sureties are to be without Damage.

A Merchant-Stranger, to whom a Debt is due by Statute-Merchant, shall besides the Pay-

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ment of his Debt be satisfied for his Stay and Detainer from his Business, &c.

This is the Purport of the Statute of *Acton-Burnel*; and by the Statute *de Mercatoribus*, 13 Ed. 1. The Merchant is to cause his Debtor to appear before the Mayor of *London*, or some Chief Warden of a City or other Town, &c. to acknowledge the Debt and Day of Payment, &c. and the Recognisance shall be enroll'd, the Roll whereof is to be double, one Part to remain with the Mayor or Chief-Warden, and the other with the Clerk appointed by the King. Then one of the Clerks is to write the Obligation, &c. which shall be seal'd with the Seal of the Debtor, and of the King, &c. If the Debt be not paid at the Day upon the Merchant's Accompt, the Mayor or Chief Warden are to cause the Debtor to be imprison'd (if in their Power) and in Prison to remain at his own Costs until he hath agreed the Debt.

If the Debtor cannot be found, the Mayor or Chief Warden are to send the Recognisance into the Chancery, from whence a Writ shall issue to the Sheriff of the County where the Debtor is, to arrest his Body, and keep him in Prison 'till he agree the Debt; and within a Quarter of a Year, his Lands and Goods shall be delivered unto him to pay the Debt; but if the Debtor do not satisfy the Debt within that Quarter, all his Lands and Goods shall be delivered to the Merchant by a reasonable Extent, To hold until the Debt is levied; and in the mean Time he shall remain in Prison; but when the Debt is satisfied, the Body of the Debtor is to be delivered, together with his Lands.

If the Sheriff return a *Non est inventus*, &c. the Merchant may have Writs to all the Sheriffs where he hath any Land ; and they shall deliver him all the Goods and Lands of the Debtor, by Extent, To hold to him and his Assigns, *ut supra*. The Merchant shall be allow'd his Damage, and all reasonable Costs, &c. All the Lands in the Hands of the Debtor, at the Time of the Recognisance acknowledg'd, are chargeable ; but after the Debt is satisfied, they shall return to the Grantees, if granted away, as do the rest to the Debtor. If the Debtor or his Sureties die, the Merchant shall not take the Body of the Heir, &c. but shall have his Lands until the Debt is levied.

In *London* (amongst the Commonalty) two Merchants are to be chosen and sworn by this Statute ; and the Seal shall be opened before them, whereof one Piece is to be delivered to the said Merchants, and the other remain with the Clerk : And before these Merchants, &c. *Recognisances* may be taken ; 1 *d.* per Pound is allow'd as a Fee to the Clerk for fixing the King's Seal, &c. And a Seal is to be provided that shall serve for *Fairs*, &c. But this Statute not to extend to *Jews*.

A Writ on the aforesaid Statute.

Hic Vic' Salutem : Quia coram tali Majore, vel Custode talis villæ, vel coram Custode Sigilli nostri de Mercatoribus in Nundinis de tali loco & tali Clerico nostro A. recognovit debere B. tantum quod solvisse debuit tali Die & tali Anno, &c. quod idem B. nondum solvit, ut dicit ; Tibi præcipimus quod Corpus prædict' A. (si Laicus sit) Capias & in prisona nostra salvo custodiri facias, quousq; de prædicto

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dicto debito satisfecerit ; Et qualiter hoc præceptum nostrum fueris Executus Scire facias Justiciariis nostris apud Westmon' per Literas tuas Sigillatas, & habeas ibi hoc Breve. Teste, &c.

By 27 Ed. 3. c. 1. The Staple of English Wool &c. is ordered to be holden at New-Castle upon Tyne, York, Lincoln, Norwich, Canterbury, Cichester, Winchester, Exeter, Bristol, &c. And when Merchandises are to be exported, they are to be first brought to the Staples to be weighed by the Standard, and sealed, &c. The Mayors and Constables of the Staple have Jurisdiction and Conusance of all People and Things which concern the Staple, and Actions may be tried before the said Officers. The Mayor of the Staple may take Recognisance of a Debt in the Presence of the Constables of the Staple, or one of them. And there shall be a Seal ordained to be remaining with the Mayor, &c. with which every Obligation upon such Recognisance shall be seal'd. Upon such Obligation, after Default of Payment, the Mayor may imprison the Debtor, and attach his Goods, and sell them to satisfy the Creditor : But if the Debtor be not found within the Staple, the Mayor is to certify the Obligation into the Chancery, from whence a Process shall issue against the Debtor's Person, his Lands, Goods, and Chattels, &c. as in Case of a Statute-Merchant : So as the Creditor may have Freehold in the Debtor's Lands, and likewise Recovery by Novel Disseisin, if he be put out.

In every Staple-Town there is to be a Mayor and two Constables established ; and when they die or are changed, others are to be chosen in their Steads by the Commonalty of Merchants :

But the Mayor is not to hold over a Year, unless he be again chosen. The Mayor and Constables have Power to keep the Peace, and to arrest Persons for Debt, Trespass, or Contract, &c. and Officers of Corporations, &c. are to be aiding and assisting to them.

The Statute 23 H. 8. c. 6. enacts, that the Chief Justices of the King's Bench and Common Pleas, or (in their Absence out of Term) the Mayor of the Staple at *Westminster*, and the Recorder of *London* shall have Power to take *Recognisances for Debt*; and Obligations are to be sealed with the Seal of the Recognisor, and such other Seal as the King shall appoint; (or with the Seal of one of the Chief Justices, the Mayor, Recorder, &c.) And the said Mayor and Recorder are to have the Custody of one such Seal to be appointed by the King.

The Clerk of the Recognisances (who is to be also appointed by the King) or his Deputy, is to write and inroll such Obligations in two several Rolls indented, whereof one shall remain with the aforeiaid Justices, or with the Mayor, Recorder, &c. as take such Recognisances, and the other with the Writer thereof. The Clerk or his Deputy, at the Request of the Creditors, their Executors, &c. is to certify the Obligations in Chancery under his Seal. And the Recognisees of such Obligations, their Executors, &c. shall have, in every Point, against the Recognisors, their Heirs, Executors and Administrators, such Process, Execution, &c. as hath been had upon an Obligation of the Statute of the Staple, &c.

The Mayor or Constable of the Staple are not to take a Recognisance of the Statute of the Staple, unless between Merchants free of the

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the Staple, for Merchandize of the same Staple, under the Penalty of 40 *l.* The King shall have an Half-Penny in the Pound upon sealing the Process for Execution of every such Obligation: The Fee of the Justices, or Mayor and Recorder, and also of the Clerk for taking the Recognisance, is 3 *s.* 4 *d.* and the Fee of the Clerk for certifying 1 *s.* 8 *d.* Taking more incurs a Penalty of 40 *l.*

The Statute 16 & 17 *Car.* 2. provides, that when any Judgment, Statute, or Recognisance, shall be extended, it shall not be avoided or delayed by Reason that any Part of the Lands extendible are omitted; saving to the Party whose Lands are extended, his Remedy for Contribution, &c. By 22 & 23 *Car.* 2. the preceding Statute to prevent Delays in extending Statutes, Recognisances, &c. is made perpetual. And by 29 *Car.* 2. c. 3. no Recognisance shall bind Lands in the Hands of Purchasers *bona fide* for valuable Considerations, but from the Time of Inrollment; which is to be set down in the Margin of the Roll: And Statutes are to be enter'd with the Clerk of the Recognisances within four Months after acknowledg'd; otherwise they shall be void against such Purchasers, &c.

The Form of a Recognisance directed by
23 *H.* 8.

Proberint universi per præsentēs nos A. B. & C. D. teneri & firmiter obligari E. F. in Centum Libris solvend' eidem E. F. aut suo certo Attornat', &c. Hered' vel Executor' suis in tal' Fest', &c. proxim' futur' post dat' present' Et si defecero vel defecerimus in solutione debit' prædict' volo & conced' vel sic volumus

lamus & concedimus quod tunc currat super me Hered' & Execut' meos vel super nos, & quemlibet nostram Hered' & Executor' nostros pena in Statut' Stapulae de Debit' pro Merchandisi in eadem Emptis recuperand' ordinat' & provis' Dat' tali Die Anno Regni Regis, &c.

The Execution upon a Statute or Recognisance pursuant to the 23 H. 8. c. 6. &c. is called an Extent; and the Body of the Conusor (if he be a Layman) and all his Lands, Tenements and Hereditaments, into whose Hands soever they come, are liable to the Extent: Goods (not of other Persons in his Possession) and Chattels, as Leases for Years, Cattle, &c. that are in his own Hands, and not sold *bona fide* and for valuable Consideration, are also subject to the Extent: And if two or more join in a Recognisance, &c. the Lands of all ought equally to be charged. And this Kind of Recognisance may be used by Merchants, or any others, for Payment of Debts, &c. 3 Rep. 13, 14.

The Land of the Conusor is not the Debtor, but the Body; and the Land is liable only in Respect that it was in the Hands of the Conusor at the Time of acknowledging the Statute, or after; and the Person is charged, but the Lands chargeable only. *Plowd.* 72. Lands held in Tail shall be only chargeable during Life, and not affect the Issue in Tail, unless a Recovery be passed: Copyhold-Lands are subject to the Extent, only during the Life of the Conusor. The Lands a Man hath in Right of his Wife shall be only chargeable during the Lives of the Husband and Wife together; and Lands which the Conusor hath in Jointenancy with another are

are subject to Execution during the Life of the Conusor, and no longer ; for after his Death, if no Execution was sued in his Life, the surviving Jointenant shall have all ; but if the Conusor survive, all is liable. 2 *Inst.* 671.

If a Conusor, after he hath entred into a Statute or Recognisance, doth convey away his Lands to divers Persons, and the Conusee sue Execution upon the Lands of some of them, and not all ; in this Case he or they, whose Lands are taken in Execution, may by an *Audita Querela*, or *Scire Facias*, have Contribution from the rest, and have all the Lands equally and proportionably extended. *Plowd.* 72.

If an Infant acknowledge a Statute or Recognisance, it is voidable by *Audita Querela* during his Minority ; but he cannot avoid it after his full Age neither by *Audita Querela*, nor Writ of Error, &c. An Infant acknowledg'd a Statute, and was taken in Execution, and at full Age he brought *Audita Querela* to avoid the Execution : *Per Cur'*, the *Audita Querela* shall abate ; for he shall not then avoid it, being Matter of Record ; but if he would avoid it, it must be during his Minority. *Moor* 196. *Worsley's Case*.

A Statute-Staple is suable in the King's Bench or Common-Pleas, as well as in Chancery. *Cro. El.* 208. And a Statute or Recognisance, and Execution thereupon, may be discharged by Defeasance on Condition, on Performance of such Condition ; by Release ; Payment of the Money, &c. Delivery up of the Statute ; Purchase of Part of the Land by the Conusee, after Execution sued ; but before it is not, neither are then the Body and Goods released, tho' the Lands may.

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If no Time be limited in the Statute for Payment of the Money, it is due presently, as in Case of a Bond. If two Men claim the same Land, one by Extent upon a Statute, the other by a Judgment the same Term; he who claims by the Judgment shall be first satisfied. *Relv.* 224.

An Assignment of a Statute-Staple.

This Indenture made the Day, &c. Between *A. B.* of, &c. *Esq;* of the one Part, and *C. D.* of, &c. of the other Part. Whereas *E. F.* of, &c. on, &c. by the Name of, &c. did enter into and acknowledge one Obligation or Recognisance, according to the Statute made in the 23d Year of the Reign of King *Henry* the Eighth, before, &c. in the Nature and of the Force of a Statute of the Staple, of and for 500 *l.* of lawful *British* Money to him the said *A. B.* &c. as by the same Obligation or Recognisance may more fully appear. Now this Indenture witnesseth that the said *A. B.* for divers good and valuable Considerations, &c. him thereunto moving, Hath bargained, sold, assigned, and set over, and by these Presents doth bargain, sell, assign and set over unto the said *C. D.* his Executors, Administrators and Assigns, the said Obligation or Recognisance, and all the said Sum of Money therein mentioned, and all and every Sum and Sums of Money thereby or thereupon due, or owing; and all the Benefit, Use, Trust, Profit and Advantage, which the said *A. B.* hath or ought to have, receive, or enjoy in Law or Equity therein, or thereby. And for the better obtaining the said Moneys the said *A. B.* for the Consideration aforesaid,

foresaid, doth hereby make, constitute and appoint the said *C. D.* his true and lawful Attorney in his Name, on Non-Payment thereof, to extend or sue any Writ, or Writ of Execution upon the said Obligation or Recognisance, against the said *E. F.* his Heirs, Executors and Administrators, or any of his or their Lands, Tenements, Goods, Chattels and Hereditaments, any Ways liable and subject thereto. And the said *A. B.* for the Considerations aforesaid doth hereby for himself, his Heirs, Executors and Administrators, covenant, promise and grant to and with the said *C. D.* his Executors and Administrators, that all and whatsoever Sum and Sums of Money he the said *C. D.* his Executors, Administrators and Assigns, shall and may lawfully obtain, get in, or receive by Virtue or Means of any Extent or Execution, or of any Composition, or otherwise, upon or by Force of the said Obligation or Recognisance, he the said *C. D.* his Executors and Administrators, shall and may for ever retain and enjoy the same to his and their own Use and Benefit, without any Account or Demand thereof, or therefore, by or to the said *A. B.* his Executors and Administrators. And also the said *A. B.* for himself, his Heirs, Executors and Administrators, doth covenant, promise and grant to and with the said *C. D.* his Executors and Administrators, by these Presents, in Manner and Form following, that is to say, that from and at any and every Time after any the Lands, Tenements and Hereditaments of the said *E. F.* shall be extended or delivered in Extent or Execution upon the said Obligation or Recognisance, or by any Process thereupon to be sued in the Name of the said *A. B.* he the
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said *A. B.* shall and will, at the Request, Costs and Charges of the said *C. D.* his Executors and Administrators, make, do, suffer, sign, seal and execute, all and every lawful and reasonable Deeds, Acts, Matters and Things, for the assigning unto the said *C. D.* his Executors and Administrators, or to such Person or Persons as he or they shall name, all such Lands, Tenements and Hereditaments, and all his Estate therein, as shall so happen from Time to Time, or at any Time hereafter to be extended, taken or delivered in Execution, upon or by Virtue of the said Obligation or Recognisance, or of these Presents, To have and to hold the same during the whole Continuance of any such Extent or Execution. And further, That the said *A. B.* hath not at any Time heretofore released, discharged or assigned the said Obligation or Recognisance, or the Benefit thereof, nor shall or will at any Time hereafter release and discharge the same, or revoke or make void the Letter of Attorney hereby given, or any Power or Authority therein or thereby granted, or do permit or suffer any Act, Matter or Thing, whereby the same Recognisance or these Presents shall or may become frustrate and void. And, Lastly, That the said *A. B.* shall and will from Time to Time, and as often as he shall be thereunto required, at the Costs and Charges of the said *C. D.* his Executors and Administrators, avow and justify all lawful Suits, Actions, Extents, and other legal Processes and Acts that shall or may be brought, had or prosecuted upon the said Obligation or Recognisance, and shall and will neither release or discharge any of them, nor enter a *Non vult ulterius prosequi*, or do or permit any other Thing to defeat the same. And
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he the said C. D. for himself, his Executors and Administrators, doth hereby, covenant, promise and agree to and with the said A. B. That he the said C. D. shall and will at all Times hereafter acquit and discharge, or otherwise save harmless and indemnified the said A. B. his Executors and Administrators, of and from all Costs, Charges and Damages, which he, they, or any of them shall or may incur, pay, suffer, or be put unto, for or by Reason of any Process, Prosecution, or other Act or Thing by him the said C. D. his Executors or Administrators, to be done or suffered upon or by Reason of the said Obligation or Recognizance, in the Name of the said A. B. or otherwise, by Virtue of these Presents. In Witness, &c.

An Assignment of an Extent on a Statute-Merchant.

This Indenture made, &c. Between A. B. of, &c. Executor of the last Will and Testament of T. B. late of, &c. deceas'd, of the one Part, and C. D. of, &c. E. F. of, &c. and G. H. of, &c. of the other Part. Whereas R. B. of, &c. on, &c. at the City of, &c. in and by one Recognizance or Statute-Merchant taken and acknowledged before, &c. then Mayor of the said City, Keeper of the greater Piece of the Seal appointed for sealing of Statutes-Merchant within the said City and, &c. Keeper of the lesser Piece of the said Seal, deputed for taking Recognizances of Merchants Debts within the said City, Did acknowledge himself to owe and stand indebted to the said T. B. in the Sum of, &c. as by the said Recognizance may appear. And whereas the said T. B. afterwards died, having before his Death made his last Will and Testament in Writing,

Writing, and thereof constituted and appointed the said *A. B.* his Son sole Executor, who duly proved the same Will. And whereas the said *A. B.* hath since sued out an Extent on the said Recognizance bearing Date, &c. and directed to the Sheriff of, &c. whereby the said Sheriff is commanded that all the Lands and Tenements in his Bailiwick whereof the said *R. B.* was at the Time of entring into the said Recognizance, or at any Time after seised, should be enquired into, and the Value asserted, and should cause the same to be delivered to the said *A. B.* at a reasonable Price and Extent, To hold to him the said *A. B.* and his Assigns, as his Freehold, according to the Form of the Statute in that Case made and provided, until his said Debt, together with his Damages and Costs, should be fully levied, as by the said Extent duly filed may appear. And whereas upon an Inquisition taken at, &c. on, &c. it was (amongst other Things) found that the said *R. B.* was seised in his Demesne as of Fee at the Time of the entering into the said Recognizance, and at the Time of taking the said Inquisition, of and in one Messuage, &c. with the Appurtenances in, &c. then or then late in the Tenure or Occupation of, &c. of the clear yearly Value of, &c. above Reprizes, which said Messuage and Lands the said Sheriff on the Day of taking the said Inquisition, caused to be delivered to the said *A. B.* by Virtue of the said recited Extent and Inquisition, To hold to the said *A. B.* and his Assigns as his Freehold, according to the Form of the Statute in that Case made and provided, until his said Debt and Damages, together with the full Costs and Charges, should be levied as aforesaid. Now this Indenture witnesseth, That the

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said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* and in Consideration also of the Sum of 5 s. of like, &c. to him in Hand paid by the said *E. F.* and *G. H.* the Receipt of which said several Sums he the said *A. B.* doth hereby confess and acknowledge, He the said *A. B.* by the Direction and Appointment of the said *C. D.* testified by his joining in and signing and sealing of these Presents, Hath granted, bargained and sold, assigned and set over, and by these Presents doth grant, bargain and sell, assign and set over unto the said *E. F.* and *G. H.* All and singular the said Messuage, Tenement and Premises above recited to have been to him delivered in Extent, as aforesaid, and every Part and Parcel thereof, with the Appurtenances, And also all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said *A. B.* of, in and to the said Premises, and of, in and to every Part and Parcel thereof with the Appurtenances. To have and to hold the said Messuage or Tenement and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *E. F.* and *G. H.* their Executors, Administrators and Assigns, for and during all such Estate, Term and Interest, which the said *A. B.* now hath, or can or may have, or be interested therein, by Virtue of the aforesaid Extent and Inquisition, or otherwise, In Trust nevertheless to and for the only proper Use and Behoof of the said *C. D.* his Executors, Administrators and Assigns. And the said *A. B.* for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns, that the said *C. D.* his Executors, Admi-

Administrators or Assigns, or the said E. F. and G. H. in Trust as aforesaid, shall and may from Time to Time, and at all Times from henceforth, during all the Rest and Residue of the Term and Interest above-recited, which is yet to come and unexpired, peaceably and quietly have, hold, occupy, possess and enjoy, all and singular the said Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of the said A. B. his Executors, Administrators and Assigns, and every of them, and of all and every other Person and Persons whatsoever claiming by, from or under him, them, or any of them. And also that the said Recognizance, Extent and Inquisition above-recited are still in full Force, and not vacated, released or discharged. And also that he the said A. B. hath not done or committed, nor shall or will he, his Executors or Assigns at any Time hereafter do or commit any Act, Matter or Thing whatsoever, whereby or by Means whereof the said recited Recognizance or any Writs, Executions, Processes, or other Proceedings already had or hereafter to be had thereupon, are, is, shall or may be vacated, released or otherwise discharged, without the Consent of the said C. D. his Executors or Administrators, But shall and will allow and own all such lawful Writs, Executions, Processes or Proceedings already had, or which the said C. D. his Executors, Administrators or Assigns shall at any Time commence, sue or prosecute, upon or by Reason of the said recited Recognizance. And the said C. D. for himself, his Executors and Administrators, doth covenant and grant to and with the said A. B.

his Executors, Administrators and Assigns, that he the said C. D. his Executors or Administrators, shall and will at all Times hereafter save harmless and keep indemnified the said A. B. his Executors and Administrators, of and from all Actions, Suits, Expences and Damages whatsoever, which shall or may be brought or happen to him or them, by Reason or Means of the said recited Recognizance, or any Process to be taken forth or executed thereon, or by Reason or Means of the Assignment hereby made, or any Power or Authority herein contained. In Witness, &c.

An Assignment of an Extent on an Elegit, Execution, &c.

This Indenture made, &c. between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part. Whereas the said A. B. in the Court of King's Bench at *Westminster* in the Term of, &c. which was in the Year, &c. by Judgment of the same Court recovered against E. F. of, &c. the Sum of, &c. Debt, besides Cost of Suit, as by the Records of the said Court may more fully appear. In Payment of which said Sum, &c. the said E. F. made Default, and by reason thereof the said A. B. sued Execution on the said Judgment, and thereupon in due Form of Law hath Extended all that Messuage, &c. situate, &c. of the clear yearly Value above Reprizes the Sum of, &c. as one Moiety of the Messuages, Lands and Tenements whereof the said E. F. was seized after the obtaining of the Judgment aforesaid, All which said Messuage, &c. by Virtue of his Majesty's Writ bearing Date, &c. was delivered in Execution

cution to the said *A. B.* for the Debt and Damages aforesaid on, &c. To hold to him the said *A. B.* and his Assigns. as his Freehold, at the yearly Value aforesaid, until the Debt and Damages aforesaid should be thereof fully levied, as by the Process and Proceedings thereof remaining upon Record in the said Court of King's Bench *Westminster* may more fully appear. And whereas the said *A. B.* by Virtue of the aforesaid Judgment and Proceedings, entered upon the said Premises, and hath held and enjoyed the same ever since accordingly. And whereas there now remains due and owing unto the said *A. B.* for Principal, Interest and Charges on the said Judgment, the Sum of, &c. over and above all Moneys by him received out of the Rents and Profits of the said Premises. Now this Indenture witnesseth, That for and in Consideration of the Sum of, &c. to the said *A. B.* in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* doth hereby acknowledge, and for divers other good Causes and Considerations, him the said *A. B.* in this Behalf moving, He the said *A. B.* hath granted, bargained, sold, assigned and set over, and by these Presents doth grant, &c. unto the said *C. D.* All and singular the said Messuage and Premises above recited to be to him delivered in Extent as aforesaid, and every Part and Parcel thereof, with the Appurtenances, and also all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said *A. B.* of, in and to the said Premises, and of, in and to every Part and Parcel thereof, with the Appurtenances, To have and to hold the said Messuage and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said

C. D. his Executors, Administrators and Assigns, for and during all such Estate, Term and Interest as the said A. B. can or might have, or is interested therein, by Virtue of the aforesaid Judgment, and the Proceedings thereon, or otherwise howsoever. And the said A. B. for himself, his Executors, Administrators and Assigns doth covenant, &c. with the said C. D. his Executors, Administrators and Assigns, that the said C. D. his Executors, Administrators or Assigns shall and may from Time to Time, and at all Times from henceforth during all the Rest and Residue of the Term and Interest above-recited, which is yet to come and unexpired, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the said Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hinderance, &c. of the said A. B. his Executors, Administrators and Assigns, and every of them, and all and every other Person and Persons whatsoever claiming in, by, from or under him, them, or any of them. And also that the said Judgment and Extent are still in Force, not vacated, &c. And the said A. B. &c. (The like Covenants from A. B. to C. D. that he hath not committed, nor will commit any Act whereby the Judgment, &c. may be vacated or released, &c. but will own all Proceedings, &c. and from C. D. to A. B. for Indemnity, as in the preceding Assignment of an Extent on a Statute-Merchant, &c.) In Witness, &c.

Of JUDGMENTS, and Executions
thereupon; and also of Bonds
and Judgments.

Judgment is the End of the Law; and so long as it stands in Force, *pro veritate accipitur*, and it cannot be contradicted. *Co. Lit. 39. 168.*

A Judgment entered, with a Release of Errors, and then a Will made whereby the Person to whom the Judgment is granted is made Executor, is the highest and best Security that can be given to a Creditor for a Debt that is due; for if there were only a Judgment, without making a Will, and the Person Executor, the Executor, whoever he is, might pay his own Debt first, (but this I take to be only where his own Debt is of the same Degree with the other) and so defeat the other Creditor of his Debt, in case there be not sufficient Assets to pay both. *1 Vol. Accompl. Conv. 208.*

If a Man is under Arrest, and gives Warrant of Attorney to confess a Judgment, and no Attorney for the Defendant is then present, the Court of King's Bench, on a Supposition that the Judgment was obtained by Force or Fear, will set aside the same. And if one gives a Warrant of Attorney to confess a Judgment, and dies before it is confess'd, this is a Countermand of the Warrant. *1 Ventr. 310.*

A Feme Sole gives Warrant of Attorney to confess Judgment, and marries before it is entered, the Warrant is also countermanded; and Judgment shall not be entered against Husband and Wife. *Salk.* 399.

If Judgment upon a Warrant of Attorney be not entered within the Year, it cannot be done without Leave of Court, on Motion and Affidavit made of the Party's being living, and the Debt not satisfy'd. 2 *Show.* 253. *Mod. Ca.* 212. One *Brown* gave a Warrant of Attorney to *Dillon* to confess a Judgment to him, and after Execution sued out thereupon, it was moved to be set aside for Irregularity; upon Suggestion that it was agreed between the Parties at the Execution thereof, that no Execution should be taken out till a Year after. The Plaintiff insisted, that he had staid a Year from the Judgment entered; but the Court did not agree whether the Year was to be reckoned from the Date of the Judgment or the Warrant. And in this Case it was a Question whether if the Execution be delayed till after the Year, a *Scire Facias* be not necessary, tho' Execution be staid by Injunction, &c. *Mod. Ca.* 14. *Salk.* 322.

To make out Execution after the Year without a *Scire Facias* is a Practice against a manifest Rule of Law, and the Court cannot take Notice of Chancery Injunctions in this Case. Writ of Execution might be taken out within the Time, without any Breach of such Injunctions; this might save the Trouble of a *Scire Facias* after the Year, by entering the Continuance down by a *Vic' non misit Breve*, &c. But if a Writ be not taken out in due Time, it will not be suffered. Adjudged in the Case of *Booth*, where Judgment being obtained with an Agreement

ment to stay Execution for three Months, within that Time the Defendant brought an Injunction in Chancery against the Plaintiff, so that he could not take out Execution till after the Year, and then he took out an *Elegit* without a *Scire Facias*. *Mod. Ca. 288.*

A Man gave Bond and Judgment defeazanced upon Payment of Money on *such a Day* certain; and it was agreed that Execution should not be sued out before; a *Fieri Facias* is sued out a Month before, and executed, upon Demand and Non-payment of the Money. Tho' this was judg'd a Breach of the Agreement, and hinder'd the Defendant in Performance, the Property of the Goods being bound by the Delivery of the Writ, so that he could not sell them to raise Money, yet *per Cur.* since it was for a just Debt, and the Judgment was executed, they would not undo any Thing, for fear it should frustrate the Judgment. *Mod. Ca. 49.*

A Judgment confess'd upon Terms, being in Effect *Conditional*, the Court will see the Terms perform'd: But where a Judgment is acknowledg'd absolutely, and a subsequent Agreement is made; this does not affect the Judgment, and the Court will take no Notice of it. *Salk. 400.*

A. takes a Judgment in the Name of *B.* who dies; Administration is granted to another: *A.* enters Satisfaction; the Administrator moves, that the Entry may be vacated; and a Rule was obtained to vacate the Entry of the Judgment: But the Court agreed the Defendant had good Equity. *Faresh. Rep. 13. B. R.*

A Rule was for Judgment in *Hilary* Term a Year back, but Costs being not taxed, Time was allowed (out of Respect to the Defendant for settling the Costs till *Easter* Term, and before

fore Costs settled and Judgment enter'd, the Plaintiff died: The Attorney enter'd up his Judgment in *Hillary* Term, as the *Hillary* Term before the Time that the Rule was pronounced, but it was set aside, and directed that the Judgment should be enter'd the last *Hillary* Term, with the Continuances till then; for the Court could not take notice of the Death of the Plaintiff. *Mod. Ca. 191.*

By Chief Justice *Holt*, If one will enter a Judgment as of a precedent Term, he must actually enter it before the Essoin-Day of the succeeding Term, otherwise it will only relate to the Term of which it is enter'd: And if Judgment be signed in *Hillary* Term, and in the subsequent Vacation the Defendant sells Lands, if before the Essoins of *Easter* Term the Plaintiff enters his Judgment, it shall affect the Lands in the Hands of the Purchaser; and if one enters Judgment so in Vacation, when the Party was dead, the Judgment shall be good by Relation, if he was living in the precedent Term. *1 Salk. 401.*

In the Case of *Rignols* versus *Tipping*, *Per Cur*. After a Rule to sign Judgment there ought to be four Days exclusive of the Day on which the Rule and the Judgment is signed; and this is granted, that the Party might have reasonable Time to bring a Writ of Error, if he see Cause; but in the Common Pleas they never give Rules for signing of Judgments, but stay till the *quarto die post*, which inclusive makes but four Days. *Mod. Ca. 241.*

Judgment may be confess'd, or suffer'd to go by Default, upon *nihil dicit*; by Consent of the Attorney for the Defendant, by entering *non sum informatus*, &c. This is often done, with a Stay

Stay of Execution. And where these Judgments without Trial are obtained, there must be a *Writ of Enquiry* of Damages before the Sheriff, &c. of which the Plaintiff is to give the Defendant Notice, and of the Time and Place of executing the same. The Sheriff hereupon is to summon a Jury, examine Witnesses, and make a Return on the Writ, in order to Judgment and Execution. *Finch* 484.

If there are two Judgments, one in *B. R.* and another in *C. P.* the Plaintiff may sue Execution upon which he will ; for both are equal, and one cannot determine the other. *1 Cro.* 817.

A Warrant of Attorney to confess Judgment.

To Mr. A. B. and C. D. Attorneys of his Majesty's Court of Common Pleas at Westminster, or to any other Attorney of the same Court.

These are to desire and authorize you, or any other Attorney of the said Court, to appear for me E. F. of, &c. in the said Court this present *Easter Term*, or any other subsequent Term, at the Suit of G. H. of, &c. and thereupon to confess Judgment against me unto him the said G. H. by *Non sum informatus, Nil dicit*, or otherwise, in an Action of Debt for 500*l.* of, &c. together with Costs of Suit. And for your or any of your so doing This shall be your sufficient Warrant. In Witness, &c.

If a Warrant be to enter Judgment as of such a Term, or any Time after ; the Attorney may enter it at any Time during Life ; but without those Words the Judgment must be enter'd the Term express'd in the Warrant ; and if no
Term

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Term be mentioned, it may be intended the next Term. 1 *Mod.* 1, &c.

A Release of Errors on a Judgment.

Know all Men by these Presents, That I E. F. of, &c. do Remise, Release, and for ever quit-claim unto G. H. of, &c. all and all manner of Error and Errors, Misprisions, Misentries and wrongful Proceedings whatsoever made, committed, omitted and done, in, about or concerning one Judgment for 500 l. Debt, together with Costs of Suit, by him obtained against me in his Majesty's Court of Common Pleas at *Westminster* in *Trinity* Term now last, and also all Writ and Writs of Error and Errors whatsoever concerning the same. In Witness, &c.

This Release is usually enter'd into at the Time of the Warrant of Attorney given, or Judgment had; and when a Judgment is satisfied, it is to be acknowledged on Record by Attorney, &c.

A Warrant of Attorney to acknowledge Satisfaction upon a Judgment.

Whereas I G. H. have obtained one Judgment in the Court of Common Pleas at *Westminster* in *Trinity* Term last against E. F. of, &c. for 500 l. Debt and, &c. Damages, which said Debt and Damages I am since satisfied and paid. Now I the said G. H. do hereby desire and authorize you the said, &c. (the Attorneys) and every of you, for me, and in my Name, and as my Attorney or Attorneys, at the Costs and Charges of the said E. F. to acknowledge Satisfaction of the Debt and Damages aforesaid upon Record
of

of the said Judgment, and upon a Release of Errors in that Behalf had and obtained. And this shall be to you, and every of you, a sufficient Warrant for so doing. In Witness, &c.

If a Judgment be signed by a Judge, but not enter'd, it is esteemed no Judgment; for it must be Recorded.

The Statutes concerning Judgments are as follow. First, 13 Eliz. c. 5. which enacts, That all Judgments, Executions, Conveyances, &c. made to avoid the Debts of others (as against the Parties only whose Debt is so endeavoured to be avoided, their Heirs, Successors, Executors or Assigns) shall be utterly void. And Parties to such fraudulent Conveyance, Judgment, &c. justifying the same to be done *bona fide* and upon good Consideration, &c. shall forfeit one Year's Value of the Lands, &c. the whole Value of the Goods, and as much Money as shall be mentioned in such Judgment, &c. and suffer half a Year's Imprisonment.

By 29 Cur. 2. c. 3. Judgments as against Purchasers *bona fide*, and for valuable Consideration, shall be Judgments only from the signing, and Entry of the Month and Year upon Record. And no Writ of Execution shall bind the Property of Goods but from the Time of its Delivery to the Sheriff, &c.

By 3 & 4 W. & M. c. 14. All Wills concerning Lands, &c. shall be deemed (as against Creditors upon Bonds, or other Specialties, their Executors, &c.) to be fraudulent and void, and the Creditors shall have Actions of Debt against the Heirs at Law, and the Devisees, &c. And where any Heir at Law shall be liable to pay the Debt of his Ancestor, in regard of any
Lands

Lands descending to him, and shall make over the same before any Action brought, such Heir shall be answerable for such Debts to the Value of the Lands made over; and Execution upon any Judgment so obtained shall be taken out against such Heir to the Value of the Land, as if it were his own Debt: But there is a Saving as to Lands *bona fide* alien'd before the Action brought.

The 4 & 5 W. & M. ordains, That if any Persons borrow any Money, and for the Payment thereof acknowledge or suffer to be enter'd against them a Judgment, Statute, &c. and afterwards borrow any other Sum of any other Persons, and for securing the Repayment thereof shall mortgage Lands, &c. and shall not give Notice of such Judgment, Statute, &c. (unless such Mortgagor, &c. in six Months pay off and discharge the same) he shall forfeit his Equity of Redemption, &c.

By 4 & 5 W. & M. c. 20. The Clerk of the Eftoins in the Court of Common Pleas, every Clerk of the *Dockets* of the Court of King's Bench, &c. before the End of *Easter Term*, are to put into an Alphabetical Docket a Particular of all Judgments of Debt, by Confession, *Non sum informatus*, or *Nihil dicit* enter'd in the said Courts of the Term of *Hilary* preceding, containing the Names of the Plaintiffs and Defendants, the Debts, Damages and Costs, &c. And every Clerk of the Judgments, &c. shall within ten Days before the said Time bring to the Clerks of the *Dockets* Notes of all Judgments by them enter'd of the said Term of *Hilary* upon Verdicts, Writs of Enquiry, &c. and the Clerks of the Judgments, &c. are also within the Time aforesaid to bring the Master of the Office

Office of Pleas the like Note in Writing of Judgments, to the End they may be enter'd; the Officers and Clerks shall also before the last Day of *Michaelmas* Term make the like Dockets of all Judgments of the Terms of *Easter* and *Trinity*; and before the last Day of every *Hillary* Term, the like Dockets of Judgments in *Michaelmas* Term; (the said Dockets to be kept and view'd by all Persons paying 4 *d.* a Term for Search, &c.) on Pain that every Clerk, &c. shall for every Term, or any such Neglect, forfeit 100 *l.* And no Judgment shall affect any Lands as to Purchasers or Mortgagors, or have any Preference against Heirs, &c. if it be not docketted as aforesaid.

The Statute of 4 & 5 *Ann. c.* 16. declares, that all the Statutes of *Jeofails* shall be extended to Judgments upon *Nihil dicit*, Confession, or *Non sum informatus* in any Court of Record, &c. so as there be an original Writ, or Bill, and Warrants of Attorney duly filed, &c. And by the Statutes of *Jeofails* 18 *Eliz.* 21 *Jac.* 1. and 16 & 17 *Car.* 2. after Verdict given in any Court of Record, there shall be no Stay of Judgment or Reversal, for want of Form in any original Writ, Declaration, Complaint, &c. for any Variance in Form between such Writs and the Declaration, &c. for want of Averment of the Parties Life or Lives, so as it be proved he or they be in Life; for misnaming any of the Jurors in any of the Writs, &c. or for want of Return of any of the said Writs, so as a Panel be returned and annexed, &c. for want of producing Deeds or Letters of Administration; mistaking the Christian Name or Surname of either Party, Sum of Money, Day, &c. being rightly named in any Record preceding, or in the same Record
whereto

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whereto the Defendant might have demurred ; nor for want of *Hoc paratus est verificare, &c.*

By 6 & 7 Ann. No Judgment, Statute, &c. in the West Riding of *Yorkshire*, and in the County of *Middlesex*, &c. (other than such as shall be enter'd into in the Name and on the Account of her Majesty) shall bind Hereditaments but only from the Time that a Memorial thereof shall be enter'd at the Register's Office. See the Statute.

Bonds and Judgments are Assigned from one Person to another in the following Manner.

An Assignment of a Bond.

Whereas *A. B.* of, &c. in and by one Bond or Obligation bearing Date, &c. which was in the Year of our Lord, &c. became bound to *C. D.* of, &c. in the penal Sum of 500 *l.* condition'd for the Payment of 250 *l.* and Interest at a Day long since past, as by the said Bond and Condition thereof may appear. And whereas there now remains due to the said *C. D.* for Principal and Interest on the said Bond the Sum of &c. Now know all Men by these Presents, That the said *C. D.* for and in Consideration of the said Sum of, &c. to him in Hand paid by *E. F.* of, &c. the Receipt whereof the said *C. D.* doth hereby acknowledge, He the said *C. D.* hath assigned and set over, and by these Presents doth assign and set over unto the said *E. F.* the said recited Bond or Obligation, and the Moneys thereupon due and owing, and all his Right and Interest of, in and to the same. And the said *C. D.* for the Considerations aforesaid hath made, ordained, constituted and appointed, and by these Presents doth make, ordain,

ordain, constitute and appoint the said E. F. his Executors and Administrators, his true and lawful Attorney and Attorneys irrevocable, for him and in his Name, and in the Name and Names of his Executors and Administrators, but for the sole Use and Benefit of the said E. F. his Executors, Administrators and Assigns, to ask, require, demand and receive of the said A. B. his Heirs, Executors and Administrators, the Moneys due on the said Bond, and on Non-payment thereof the said A. B. and his Heirs, Executors and Administrators to sue for and recover the same, and on Payment thereof to deliver up and cancel the said Bond, and give sufficient Releases and Discharges, and one or more Attorney or Attorneys under him to constitute, and whatsoever the said E. F. or his Attorney shall lawfully do in the Premisses, the said C. D. doth hereby allow and confirm. And the said C. D. doth covenant with the said E. F. That he the said C. D. hath not received nor shall or will receive the said Money due on the said Bond, or any Part thereof, neither shall or will release or discharge the same, or any Part thereof, but will own and allow of all lawful Proceedings for Recovery thereof, he the said E. F. saving the said C. D. harmless of and from any Costs that may happen to him thereby. In Witness, &c.

An Assignment of a Bond and Judgment.

This Indenture made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part. Whereas by one Obligation or Writing obligatory bearing Date, &c. E. F. of, &c. became bound unto the said A. B. in the

Sum of 400 l. of, &c. with Condition thereunder written for Payment of 200 l. of, &c. on, &c. next ensuing the Date of the said Obligation, as by the said Obligation and the Condition thereof, Relation being thereunto had, may more fully appear. And whereas the said *A. B.* did in *Mischaemas* Term, in the Year of our Lord, &c. recover by Judgment in the Court of Common Pleas against the said *E. F.* the Sum of 400 l. Debt and, &c. for Damages, as by the Record thereof remaining in the said Court may appear. Now this Indenture witnesseth, That the said *A. B.* for and in Consideration of a competent Sum of Money to him in Hand paid by the said *C. D.* at or before the Sealing and Delivery of these Presents, the Receipt whereof the said *A. B.* doth hereby acknowledge, Hath granted, transferred, assigned and set over, and by these Presents doth grant, assign and set over unto the said *C. D.* his Executors, Administrators and Assigns, as well the said Obligation or Writing obligatory, as also the said Judgment, and all the Benefit, Sum and Sums of Money, &c. that may be obtained or gotten by Reason or Means of the said Obligation and Judgment, or either of them. And further the said *A. B.* doth by these Presents make, ordain, constitute, authorize and appoint the said *C. D.* his true and lawful Attorney irrevocable, in his Name, Place and Stead, to sue and prosecute upon the said Judgment, and to procure any further Judgment or Judgments, Execution or Executions against the said *E. F.* his, &c. for the said Sum of Money in the said Obligation mentioned, and upon Satisfaction given, or any other End, Composition or Agreement made of or concerning the Premises, to

acknowledge Satisfaction, or to make and execute any other Release or Discharge for the same. And also to do all and every other Act and Acts, Thing and Things whatsoever, which shall be requisite and necessary to be done in or about the Premisses as fully as the said *A. B.* might or could do the same. And the said *A. B.* for himself, his Executors and Administrators, and every of them, doth covenant, promise and grant to and with the said *C. D.* his Executors and Administrators, and every of them by these Presents, that he the said *A. B.* his Executors and Administrators, and every of them, shall and will justify, allow, ratify and confirm all and whatsoever the said *C. D.* his Executors or Administrators shall lawfully do or cause to be done in or about the Premisses, And that neither he the said *A. B.* his Executors nor Administrators, nor any of them, will revoke or make void this Letter of Attorney, nor any Authority hereby given to the said *C. D.* his Executors or Administrators, nor shall hereafter sue for or meddle with the said Debt or Judgment further or otherwise than as the said *C. D.* his Executors or Administrators shall direct and advise. And the said *C. D.* for himself, his Executors and Administrators doth covenant, promise and grant to and with the said *A. B.* his Executors and Administrators, that he the said *C. D.* his Executors and Administrators shall and will from Time to Time, and at all Times hereafter, save, keep harmless and indemnify the said *A. B.* his Executors and Administrators, of, from and concerning all Costs and Charges whatsoever, which shall or may any ways become payable, or be recovered by Means or Occasion of any Action or Actions, Suit or Suits, to be brought

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or prosecuted in the Name of the said *A. B.* his Executors or Administrators, by Virtue of any Power or Authority hereby given unto the said *C. D.* his Executors or Administrators. In Witness, &c.

An Assignment of a Judgment.

This Indenture Tripartite made. &c. Between *A. B.* of, &c. and *E.* his Wife of the first Part, *C. D.* of, &c. of the second Part, and *E. F.* of, &c. of the third Part. Whereas heretofore (that is to say) in *Michaelmas* Term, in the Year, &c. the said *E.* by the Name of *E. M.* in his then Majesty's Court of King's Bench, *Westminster*, did obtain and recover against the said *C. D.* one Judgment for 500 *l.* Debt besides Costs of Suit, as by the Records of the said Court may appear. And whereas since the obtaining of the said Judgment the said *E.* hath intermarried with the said *A. B.* and since that (to wit) in *Michaelmas* Term last they the said *A. B.* and *E.* his Wife have caused the said Judgment to be revived by *Fieri Facias*, and thereupon Execution has been awarded for them the said *A. B.* and *E.* his Wife, against the said *C. D.* as by the Records of the said Court may also appear. And whereas the said *C. D.* and the said *A. B.* have this Day accounted together of and concerning the Money due on the said Judgment, and the Interest thereof, and Charges thereabout, upon which Account there remains due and owing to the said *A. B.* and *E.* his Wife the full Sum of, &c. Now this Indenture witnesseth, That the said *A. B.* and *E.* his Wife, for and in Consideration of the Sum of, &c. to them in Hand paid by the said *E. F.* by and with the
Consent

Consent and Agreement of the said C. D. testified by his being a Party to and signing and sealing of these Presents, the Receipt whereof they the said A. B. and E. his Wife do hereby acknowledge, they the said A. B. and E. his Wife by and with the Consent and Agreement of the said C. D. testified as aforesaid, have, and either of them hath assigned and set over, and by these Presents do, and either of them doth freely and absolutely assign and set over unto the said E. F. his Executors, Administrators and Assigns, the said recited Judgment, and the Monies therein mentioned, and also all the Estate, Right, Title, Interest, Benefit, Advantage, Claim and Demand whatsoever of them the said A. B. and E. his Wife, in and to the same. And the said A. B. and E. his Wife, for the Considerations aforesaid, have made, ordained, constituted, deputed and appointed, and by these Presents do, and either of them doth make, ordain, constitute, depute and appoint the said E. F. his Executors and Administrators, to be their true and lawful Attorney and Attorneys irrevocable, giving unto him and them full Power and Authority in the Names of the said A. B. and E. his Wife, their Executors and Administrators, to sue forth, commence and prosecute all and all Manner of Suits and Prosecutions in Law or Equity, Executions and other Processes whatsoever upon the said Judgment, for and concerning the obtaining, getting and receiving the Moneys therein mentioned, and thereby due and payable, and to take and receive the same Moneys, and the full Benefit and Advantage of all and all manner of Executions at any Time hereafter to be sued forth and prosecuted upon the said Judgment, to the only

proper Use and Benefit of the said *E. F.* his Executors, Administrators and Assigns, without any Account to be therefore given or made to the said *A. B.* and *E.* his Wife, or either of them, their or either of their Executors or Administrators, And upon Receipt or Satisfaction of the Moneys due on the said recited Judgment, the said *E. F.* his Executors, Administrators or Assigns are hereby authorized to give Discharges for the same, and to cause the said Judgment to be vacated and made void, and generally to do and perform all and every other Act and Acts, Thing and Things necessary to be done for the obtaining, getting and receiving the Moneys due and payable by the said Judgment, as by the said *E. F.* his Executors, Administrators and Assigns shall be thought expedient, and whatsoever the said *E. F.* his Executors, Administrators or Assigns shall lawfully do, or cause to be dooe in the Premisses, the said *A. B.* and *E.* his Wife, their Executors, Administrators and Assigns shall and will ratify, allow and confirm, And the said *A. B.* for himself, his Executors and Administrators doth covenant and grant to and with the said *E. F.* his Executors, Administrators and Assigns, that they the said *A. B.* and *E.* his Wife, or either of them, have not, nor hath released, impeached, hindered, discharged or avoided, nor shall or will at any Time hereafter do, or cause to be done, any Act, Matter or Thing which may any ways release, impeach, discharge, hinder, or avoid the said recited Judgment, or any Writs, Executions, Process or Proceedings whatsoever at any Time hereafter to be had and prosecuted thereon, nor shall or will revoke, alter or disanul these Presents, or any Power or Authority hereby given or granted,

ed, without the Direction or Consent of the said *E. F.* his Executors, Administrators or Assigns. And further, that the said *A. B.* and *E.* his Wife, their Executors and Administrators, upon every reasonable Request, and at the Cost and Charges in the Law of the said *E. F.* his Executors, Administrators or Assigns, shall and will make unto him and them such further and other good and sufficient Letter or Letters of Attorney, Assurance and Assurances, as he or they, or his or their Counsel shall think fit and convenient for or touching the said Judgment, or any Thing that shall or may be had or obtained by reason thereof, or of any Extent or Execution thereupon to be sued. And the said *C. D.* for himself, his Executors and Administrators, doth covenant and grant to and with the said *A. B.* and *E.* his Wife, their Executors and Administrators, that he the said *C. D.* his Executors and Administrators shall and will from Time to Time, and at all Times hereafter, well and sufficiently defend, save and keep indemnified the said *A. B.* and *E.* his Wife, their Executors and Administrators, and his and their Lands and Tenements, Goods and Chattels, of, from and against all Costs, Charges, Damages and Expences whatsoever, which they or either of them shall sustain or be put unto for or by reason or Means of any Writ or Writs, Suits or Prosecutions, either in Law or Equity, which shall at any Time hereafter be sued out or prosecuted by the said *E. F.* his Executors or Administrators, or his or their Attorney or Attorneys, upon or by reason of the said recited Judgment, or by Virtue of any Power or Authority hereby given, or herein contained. And the said *A. B.* for himself, his Executors and

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Administrators doth covenant and grant to and with the said *E. F.* his Executors, Administrators and Assigns, that he the said *A. B.* his Executors and Administrators shall and will from Time to Time, and at all Times hereafter save harmless and keep indemnified the said *E. F.* his Executors and Administrators, and his and their Goods and Chattels, Lands and Tenements, of and from all Actions, Suits, Costs, Damages and Expences, which have been or shall be sued or prosecuted by *T. M.* of, &c. or any claiming under him by Virtue or Means of the said Judgment, or the Money thereby secured or payable. In Witness, &c.

Of MORTGAGES, *Collateral Securities, &c. with Variety of* PRECEDENTS.

A Mortgage is a Pawn of Lands, Goods, &c. for Money lent, upon Condition to be the Creditor's for ever, if the Money is not repaid at the Time appointed. He that mortgages the Land, &c. is called the Mortgagor, and he to whom the Mortgage is granted is called the Mortgagee. 1 *Inst.* 205.

It is commonly made either by Lease for a long Term of Years, by Lease and Release, or by Assignment, &c. and the Creditor holding the Land upon this Agreement is in the mean time called *Tenant in Mortgage*: But till Failure be made of Payment, the Mortgagor usually holds the Land;

Land; and if Failure is made, whereupon the Mortgagee enters into the Lands, yet the Mortgagor hath an Equity of Redemption, and may call the Mortgagee to an Account for the Profits. *Lit. 332.*

But a Feoffment in Fee, a Gift in Tail, or a Lease for Life or Years, may be made upon Condition that if the Feoffor, Grantor or Lessor, or their Heirs or Executors pay to the Feoffee, Grantee or Lessee such a Sum of Money at a certain Day, then the Feoffor, Grantor, or Lessor, their Heirs or Executors, may re-enter. In the former Case, the Mortgagor keeps the Possession till Failure; but in this Case the Mortgagee has the Possession presently, and till Payment. *Lit. 333.*

If a Feoffment in Mortgage be made upon Condition that the Feoffor shall pay such a Sum at such a Day, &c. by the Deed limited and agreed, and the Feoffor dieth before the Day of Payment, &c. yet if the Heir of the Feoffor pay the same Sum of Money, at the same Day to the Feoffee; or tender the Money, and the Feoffee refuses to receive it; in this Case the Heir may enter into the Land, and yet the Condition is, that if the Feoffor shall pay, &c. without mentioning the Heir; for the Heir hath Interest of Right in the Condition, &c. and the Intent was no more than that the Money should be paid at the Day limited, and the Feoffee hath no more Loss by the Payment of the Heir, than if the Money were paid by his Ancestor: But if a Stranger, who hath not any Interest in the Land, will tender the Money to the Feoffee at the Day appointed, the Feoffee is not bound to receive it. *Lit. Co. Lit. 205.*

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The Condition descends unto the Heir; the Law that giveth him an Interest in the Condition, giveth him Ability to perform it: And the Law enableth the Heir (of whom no mention was made in the Condition) to perform the Condition, lest the Inheritance should be lost. Also the Intent and true Meaning of the Condition shall be observed; so that where it is here said that the Heir may tender, &c. the Executors or Administrators of the Mortgagee, or in Default of them the Ordinary may tender, &c. to save the Estate. But if the Condition be that the Mortgagor or his Heirs shall pay, &c. and he die before the Day without Heir, whereupon the Condition becomes impossible to be performed, &c. in this Case the State of the Feoffee shall not be avoided. *Co. Lit.* 206.

Upon a Mortgage in Fee, if the Feoffee makes his Executors, and dieth before the Day of Payment, the Money shall be paid to the Executor, tho' he is not named, and not the Heir: But the Words of the Condition may be for Payment to the Heir, whereby the Executor will be excluded: Tho' if the Words are to pay the Money to the Feoffee, his Heirs or Executors, the Mortgagor may pay either of them at his Election. If a Feoffee is to pay Money to the Feoffor, his Heirs and Assigns, and before the Day of Payment, the Feoffor makes his Executor and dies, the Feoffee may pay the same either to the Heir or Executors, for they are his Assigns in Law to this Intent, where the Feoffor has but a bare Condition: But if the Feoffor be to pay the Feoffee, his Heirs or Assigns, and the Feoffee happens to die before the Day of Payment, the Feoffor must pay

pay the Money to the Heir ; for the Executors in this Case are no Assignees in Law. In Chancery it is a constant Rule, that Money to be paid on Mortgages in Fee, upon the Death of the Mortgagee, shall go to the Executors.

1 *Inst.* 209. 5 *Rep.* 96, 97. 2 *Ventr.* 348, 351.

Where there is a Mortgage in Fee, and the Time appointed for Payment of the Money is expired, the Redemption-Money shall be paid to the Executor and not the Heir : For when a Day is past, 'tis as much as if no Person had been express'd ; and then the Law appoints it to the Executor, tho' Heirs, Executors, &c. are nam'd. 2 *Ventr.* 348.

In all Cases of Conditions for Payment of a certain Sum in Gross, touching Lands or Tenements, if lawful Tender be once refused by the Party which ought to receive it ; he that tenders the same (being the Person that ought to do it) is for ever afterwards fully discharged. *Lit.* But my Lord Coke makes this Diversity ; that tho' the Mortgagee that renders the Money is discharged for ever from making any Tender ; yet if it were a Duty before, tho' the Feoffor enter by Force of the Condition, the Debt or Duty remains. As if a Man borrow 100 l. of another, and afterwards mortgages Lands to him, with Condition for the Payment of the said 100 l. if the Mortgagor tenders the Money to the Mortgagee, and he refuseth it ; the Mortgagor may enter into the Land, and the Land is freed for ever of the Condition ; but yet the Debt continues, and may be recovered by Action of Debt : But if there be no Debt preceding the Mortgage, it is otherwise ; for if the 100 l. be tender'd and refused, there is no Remedy for the same. *Co. Lit.* 209.

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If a Feoffment is made upon Condition that if the Feoffor pay a certain Sum of Money to the Feoffee (*without limiting any Time*) then it shall be lawful for the Feoffor and his Heirs to enter, &c. In this Case, if the Feoffor die before the Payment made, and the Heir will tender to the Feoffee the Money, such Tender is void, because the Time within which it ought to be done is past: For when the Condition is, that if the Feoffor pay the Money to the Feoffee, &c. this is understood that the Feoffor during his Life pay the Money to the Feoffee, so that when the Feoffor dies, the Time of the Tender is expired: But it is otherwise where a Day of Payment is limited, and the Feoffor dies before the Day, then the Heir, &c. may tender the Money, as I have before observed; because the Time of the Tender may not be past by the Death of the Feoffor. *Lit. Sect. 337.*

If no Place be appointed for Payment of Money on a Feoffment or Mortgage, it is not sufficient for the Feoffor to be upon the Land there ready to pay the Money at the Day limited, but he must seek the Feoffee, &c. if he be in any other Place in *England*; as in case of an Obligation to pay a Sum of Money at such a Day, without naming the Place, &c. The Money is a Sum in Gross, and collateral to the Title of the Land, so that the Feoffor must tender the Money to the Person of the Feoffee; and it is not enough for him to tender it upon the Land: Otherwise it is of a Rent that issues out of Land, &c. And if the Condition of a Feoffment, be to deliver Timber, Corn, &c. (Things of great Weight) the Feoffor is not obliged to carry the same about, and seek the Feoffee; but before the Day he must know
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from the Feoffee where he will appoint to receive it, and there it must be delivered. *Co. Lit.* 210.

By some Opinions (in ancient Times) it has been holden that Tender of the Money upon the Land should be good, because the Condition is depending upon the Land: And it has been adjudg'd, that if the Feoffor be upon the Land ready to pay the Money to the Feoffee at the Day limited, and the Feoffee be not then there, then the Feoffor is excused the Payment of the Money, for that no Default is in him. But this is contradicted by the better Opinions *ut supra*; and he is bound to seek the Feoffee if he be in any other Place within the Realm. *Co. Lit. ibid.*

But if the Feoffee go out of the Realm of England, the Feoffor is not bound to seek him, or to go out of the Kingdom unto him: And as the Feoffee is the Cause that the Feoffor cannot tender the Money, the Feoffor may enter into the Land as if he had duly tender'd it according to the Condition of the Feoffment.

To prevent Trouble of this Kind, it is the best Way in Mortgages (according to *Littleton's Advice*) to appoint a special Place for the Payment of the Money, and the more special it is, the better it will be for the Mortgagor: As if *A.* enfeoff *B.* To hold to him and his Heirs, upon Condition that if *A.* pay to *B.* on, &c. next coming, in the House of, &c. between the Hours of, &c. of the same Day, &c. That then it shall be lawful for the aforesaid *A.* and his Heirs to enter, &c. In this Case the Feoffor need not seek the Feoffee in any other Place, nor be there longer than the Time mentioned in the Mortgage for the Tender of the Money, &c. *Lit. Sect.* 342.

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This Method is very much approved by Sir *Edward Coke*, in regard that *Certainty is the Mother of Repose*, and Incertainty the Cause of Contentions. Also where the Place of Payment is limited, the Feoffee is not bound to receive the Payment in any other Place, but in the same Place so limited: And yet if he do receive the Payment in another Place, this will be as effectual to the Feoffor as if the Receipt had been in the Place limited, &c. For the Place is but a Circumstance; and therefore if the Feoffee or Obligee accept it at any other Place it is sufficient. And so it is if Money be to be paid on such a Feast; if the Money be tender'd and received at any Time before the Day, it is sufficient. *Co. Lit. 212.*

If a Man make a Feoffment in Fee upon Condition, that if he or his Heirs pay a certain Sum of Money before such a Day; and the Feoffor commits Treason, is attainted and executed; now is there a Disability on the Part of the Feoffor, for he hath legally no Heir, and his Blood is corrupted; but if his Heir be restored before the Day, he may perform the Condition. It is otherwise if such a Disability grow on the Part of the Feoffee, because by the Disability of the Feoffee the Condition is broken, and the Feoffor may enter; but so it is not by Disability of the Feoffor, for if he or his Heir &c. perform the Condition within the Time, it is good, as they may at any Time perform the Condition before the Day. *Co. Lit. 221.*

A Man mortgages his Land to *A. B.* upon Condition that if the Mortgagor and *C. D.* pay a Sum of Money at such a Day to the Mortgagee, that then he shall re-enter; the Mortgagor dies before the Day, whereupon *C. D.*
pays

pays the Money to the Mortgagee, this will be a good Performance of the Condition, and yet the Letter of the Condition is not performed. But if the Mortgagor *A. B.* had been alive at the Day, and he would not pay the Money, but refused the same, and *C. D.* alone tenders the Money, the Mortgagee may refuse it. *Co. Lit.* 219.

In case of Feoffment in Mortgage, if the Feoffor payeth to the Feoffee a Horse, Piece of Plate, &c. in full Satisfaction of Money, and the Feoffee receiveth it, this is good enough, and as strong as if he had received the Sum of Money; tho' the Horse or other Thing be not any thing near the Value of the Money; because the other hath accepted it in full Satisfaction of the Condition. *Lit. Sect.* 344. But if a Condition be for delivering a Horse, &c. the Acceptance of Money, &c. will not be a Performance. *Co. Lit.* 212.

If a Man make a Feoffment in Fee upon Condition, if the Feoffor at any Time during his Life pay to the Feoffee 50 *l.* &c. at such a Place certain, that then the Feoffor may enter, &c. In this Case the Feoffor must give Notice to the Feoffee, when he will pay it, to fix the Time to a Certainty; for without such Notice, the Tender of the Money will not be sufficient: But if the Feoffor meet the Feoffee at any Time, at the Place, he may tender the Money; because there is a Certainty of finding the Feoffee. The Case is the same with relation to Obligations: And if *A.* be bound to *B.* with Condition that *C.* shall enfeoff *D.* at such a Day, *C.* must give Notice to *D.* thereof, and request of him to be upon the Land at the Day to receive the Feoffment, &c. 18 *Eliz. Dyer* 354.

A Feoffment is made upon this Condition, that if the Feoffee pay to the Feoffor, at a Day limited, 20 l. then the Feoffee shall have the Land to him and to his Heirs; and if he fail to pay the Money at the Time appointed, that then it shall be lawful for the Feoffor or his Heirs to enter, &c. and afterwards, before the Day limited, the Feoffee sells the Land to another, and maketh a Feoffment thereof; in this Case, if the second Feoffee will tender the Money at the Day to the Feoffor, and the Feoffor refuse the same, &c. then the second Feoffee hath an Estate in the Land clearly without Condition: For the second Feoffee hath an Interest in the Condition for the Safeguard of his Tenancy: The first Feoffee may tender the Money likewise, after the Sale to the second Feoffee, for the Preservation of the Estate, because he was privy to the Condition. *Lit. Sect. 336.*

Altho' the second Feoffee be not named, yet shall he tender the Money; and he that hath Interest in a Condition on the one Side, or in the Land on the other, may tender. And the Feoffee may tender any Money, altho' it be Foreign Coin; if made currant by Act of Parliament, &c. *Co. Lit. 207.*

If Land be granted to a Man for the Term of five Years, upon Condition that if he pay to the Grantor a certain Sum within the two first Years, that then he shall have Fee, otherwise but the Term of five Years (and Livery of Seisin is made by the Grantor to the Grantee) Now he hath a Fee-simple conditional, &c. *Lit. Sect. 350.*

Regularly when any Man will take Advantage of a Condition, if he may enter, he must Enter; tho' a Condition annexed to an Estate may be made so as to make it void without En-

Entry; and when he cannot enter, he must make a Claim; for the Freehold and Inheritance will not cease without Entry or Claim; and the Feoffor or Grantor may wave the Condition at his Pleasure. As if a Man grant an Advowson, &c. to another and his Heirs upon Condition, that if the Grantor, pay 20 l. on such a Day, &c. the Estate of the Grantee shall be void: The Grantor pays the Money; yet the Estate is not re-vested in him before Claim is made: And so it is of a Reversion or Remainder; of a Rent, Common, &c. there must be a Claim before the Estate will be re-vested in the Grantor, by Force of the Condition; and that Claim is to be made upon the Land. *Plowd. 133.*

If a Man make a Feoffment, which passeth by Livery of Seisin, there must be a Re-entry by Force of the Condition, before the Estate is void. If a Man bargain and sell Lands by Deed Indented and Inroll'd, with Proviso that if the Bargainor pay, &c. then the Estate shall cease; he pays the Money, the Estate is not re-vested in the Bargainor before a Re-entry: Also if Lands are devised to a Man and his Heirs, upon Condition that if the Devisee pay not such a Sum at such a Day, that his Estate shall be void; the Money is not paid, the Estate shall not be vested in the Heir before Entry. *Co. Lit. 218.* But if I grant a Rent-Charge in Fee out of my Land, upon Condition; there if the Condition be broken, the Rent shall be extinct in my Land; because I (that am in Possession of the Land) need make no Claim or Entry upon the Land; and the Law adjudges the Rent void without it. *Plowd. 133.*

And as no Man may annex a Condition to an Estate but he that doth create the Estate it
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self; so neither can a Man give or reserve the Power, Title or Benefit of *Re-entry* and Avoidance of an Estate, upon the Breach of a Condition, to any other but him or them, or one of them that doth make the Estate, his Heirs, Executors, &c. for it is a Rule of Law, that *none may take Advantage of a Condition but Parties and Privies*, in Right and Representation, as Heirs, Executors, Successors, &c. not him to whom a Reversion is limited, &c. *Plowd. 175. Co. Lit. 214, &c.*

Where a Mortgage is Forfeited, the Mortgagee may bring *Ejectment* without actual Entry; for he is esteemed in Possession on executing the Conveyance: But where a Condition is to be defeated, it must be by actual Entry. When Lands are mortgaged, the Interest in Law is in the Mortgagee before Forfeiture; he hath purchased the Lands as it were upon valuable Consideration, as the Law will intend: And though the Mortgagor may Redeem, yet it is not certainly known whether he will or no; and if he do not, the Estate is absolute in the Mortgagee. *Micb. 23 Car. B. R.*

Pledging of Goods doth not make such a Property as the mortgaging of Lands; it is a Delivery only until the Mortgagor pays the Money agreed; and the Pledge delivered is but Security for the Money lent; so as he who borrows the Money is to have again the Pledge when he repays it, or he may have Action for the Detainer; and his Tender of the Money gives him Interest therein. There is this Difference between a Mortgage of Lands and pledging of Goods: The Mortgagee hath absolute Property in the Lands; but the other a special Property only in the Goods, to detain them for

his Security, &c. The Redemption of a Pledge, in case no Time be appointed for it, may be well made after the Death of him to whom pledged; but not after the Death of him who pledged the Goods. 2Cro. 245. In other Cases, Brokers generally stay but a Year for their Money, at the End of which they sell the Goods if not Redeemed; and the Reason of exorbitant Interest being taken by Brokers, is the Want of Witnesses prove to the Contract.

Goods pawn'd for Money borrow'd, without a Day set for their Redemption, are redeemable at any Time during the Life of the Borrower. The Party that pledges the Goods hath such a general Property in them, that if they are casually lost, he must abide the Loss; (and so he shall if they are stoln, before Tender of the Money borrow'd) They cannot be forfeited by the Party that hath them in Pawn for any Offence of his; nor be taken in Execution for his Debt: Neither may they otherwise be put in Execution, till the Debt for which they are pawn'd is satisfied. The Party that hath them hath such a special Property, that if it be a Horse, &c. he may work him; if a Cow, milk her, &c. But other Things, that will grow the worse by Usage, as Apparel, &c. he may not use. *Lit. Rep.* 332. *Owen's Rep.* 124.

And he that takes a Pledge may assign it over to another, who is to hold it subject to the same Conditions: If he happens to die before it is Redeemed, his Executors shall have it upon the like Terms as he had it. If Goods pawn'd are perishable, and no Day being set for the Payment of the Money, they lie in Pawn till spoil'd, without any Default in him that hath them in keeping; the Party that pledged them

shall bear the Damage ; for it shall be adjudged his Fault that he did not redeem them sooner ; and he to whom pledged may have Debt for his Money : If the Goods are taken from him, he may have Action of Trespass, &c. *Co. Lit. 89, &c.*

If a Man make a Mortgage of Lands, and covenant to pay the Money, and dies, the personal Estate of the Mortgagor shall, in Favour of the Heir, be applied to discharge the Mortgage ; it is the same if there were no Covenant to pay the Money, if the Mortgagor had the Money : But this is not allow'd unless there be personal *Assets* sufficient to pay all Legacies ; for the Mortgage shall be paid out of the Land, if there be not personal *Assets* to discharge the Legacies : And if *Assets* fall short, the Legatees may compel the Mortgagee to refund. *Salk. Rep. 450.*

In Case Lands in Fee and for Life are join'd in Mortgage ; if the Fee is not sufficient, the Life shall be valued only as it was at the Time, *viz.* at 7 or 8 Years Purchase, &c. and not according to the Enjoyment since, be it 20 Years or more. *2 Keb. 376.*

A Jointress of mortgaged Lands has been decreed that paying the Mortgage-Money, she should hold over till she and her Executors were paid with Interest, &c. *Chanc. Rep. 271.* And Infants have been admitted to redeem a Mortgage. A Devise of all Goods, Moneys, Bills, Bonds, Mortgages, &c. is good to pass Lands mortgaged, the Money, Interest, &c. *3 Cro. 37.* But an Agreement made at the Time of the Mortgage will not make future Interest Principal : The Interest must be first grown due before an Agreement concerning it may make the same Principal. *Salk. 449.* The

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The Court of Chancery not only gives Relief against unreasonable Engagements, enter'd into without good Consideration, &c. for which there is no Remedy in the Common Law Courts; and makes Decrees for and against Infants, Women Covert, &c. But also Mortgagors, may be Relieved against Penalties and Forfeitures, on a Hearing in Chancery. 4 *Inst.* 84. 213.

But Mortgages are not relievable in Chancery after 20 Years (for the Statute 21 *Jac.* 1. limits the Time of Entry to that Number of Years) where no Demand has been made, or Interest paid, &c. or there are not other particular Circumstances, as in Cases of Infants, Feme-Coverts, &c. 2 *Ventr.* 340.

It is allowed in Courts of Equity, that where Lands are mortgaged thrice, the third Mortgagee may buy in the first Incumbrance to protect his own Mortgage; and he shall hold the Land against the second Mortgagee, unless such second Mortgagee satisfy the Money he paid the first Mortgagee, and also his own which he lent upon the last Mortgage: But when Part only of the Lands are mortgaged to the first, and the whole to the second, and after to the third; if the third Mortgagee buyeth in the first Title, it shall protect only that Part which is first in Mortgage. 2 *Ventr.* 338.

Likewise a Purchaser or Mortgagee coming in upon a valuable Consideration, without Notice, and then purchasing in a precedent Incumbrance, shall protect his Estate against any Person that hath a Mortgage subsequent to the first, tho' before the last Mortgage; and notwithstanding he purchased in the Incumbrance after Notice of a second Mortgage. 2 *Ventr.* 339.

The Stat. 27 *Eliz. c.4* (which makes Conveyances to defraud Purchasers void, &c.) enacts, That if Lands are first conveyed with Clause, Provision, or Condition of Revocation, Determination or Alteration; and are afterwards or exchanged for Money or other good Consideration, before the first Conveyance is revok'd, alter'd or made void, according to the Power given thereby; in this Case, such first Conveyance shall be void against the Vendee, and all others lawfully claiming from, by or under him: But no lawful Mortgage made *bona fide* without Fraud, shall be impeach'd by this Act.

By 4 & 5 *W. & M. c. 16*. If any Person shall borrow any Sum of Money, or for any other valuable Consideration, for the Payment thereof acknowledge a Judgment, &c. and afterwards upon borrowing any other Sum of any other Persons, or for other valuable Consideration, shall for securing the Repayment or Discharge thereof, mortgage Lands to the second or other Lenders, or to any other Persons in Trust for them, and not give Notice to the Mortgagee of such Judgment, &c. in Writing before the Execution of the said Mortgage, &c. Or upon Notice (given by the Mortgagee under Hand and Seal, attested by two or more Witnesses) of such former Judgment, &c. within six Months pay off and discharge the same, such Mortgagor shall have no Benefit of Equity of Redemption of the Lands mortgaged.

If any Person who hath once mortgaged Lands for Security of Money, or for other valuable Considerations, shall *again mortgage* the same Lands, or any Part thereof, to any other Person (the former Mortgage being in Force) and shall not discover to the second Mortgagee the

the first Mortgage, such Mortgagor shall have no Relief or Equity of Redemption against the second Mortgagee: And such second or other Mortgagees may redeem any former Mortgage: But this Act shall not extend to bar any Widow of any Mortgagor from the Dower, who did not legally join with her Husband in such Mortgage, or otherwise lawfully exclude herself. *Stat. ibid.*

The 7 & 8 W. 3. c. 25. relating to *Elections of Members of Parliament*, ordains, That no Person shall be allowed to have any Vote in Election of Members of Parliament, for or by reason of any Trust or Mortgage, unless such Trustee or Mortgagee be in actual Possession, or receive the Rents and Profits of the Estate; but the Mortgagor, or *Cestui que Trust* in Possession, shall and may vote for the same Estate, &c.

Registering of Incumbrances is a great Security of Titles to Purchasers and Mortgagees. And by 2 Ann. Mortgages, &c. (and Conveyances) are to be Register'd in the West Riding of Yorkshire; or otherwise they shall be void. And upon a Certificate signed by Mortgagors, and Mortgagees, &c. attested by two Witnesses, that all Moneys due have been satisfied in Discharge of the Incumbrances (which Witnesses are upon Oath to prove the Money paid,) in this Case the Register shall make an Entry in the Margent against the Inrollment of the Mortgage, that the same is satisfied; which clears the Estate from the said Mortgage, in the same Manner as entering Satisfaction upon Record of a Judgment in the Courts at *Westminster*.

Upon a Mortgagor's paying the Interest of the Money borrowed to the Mortgagee, Mort-

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gages oftentimes continue a long Time without disturbing the Possession or Parties.

A Mortgage of Goods.

This Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part, Witnesseth, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* at and before the Sealing and Delivery of these Presents, the Receipt whereof the said *A. B.* doth hereby acknowledge, He the said *A. B.* hath bargained and sold, and by these Presents, Doth bargain and sell unto the said *C. D.* All that Waggon, with the Horse, Tackle, and other Appurtenances thereto belonging, and also, &c. (or all and singular the Goods, Chattels, Utensils and Things mention'd and express'd in the Schedule hereto annex'd) To have and to hold the said Goods and Chattels above by these Presents bargained and sold unto the said *C. D.* as his own proper Goods and Chattels from henceforth for ever. Provided always, and upon Condition, that if the said *A. B.* his Heirs, Executors or Administrators do well and truly pay, or cause to be paid unto the said *C. D.* his Executors, Administrators or Assigns, at or in, &c. the Sum of, &c. in and upon, &c. without any Deduction or Abatement for Taxes, or any other Impositions whatsoever, that then this present Indenture, and every Thing herein contained, shall cease, determine and be void. And the said *A. B.* for himself, his Executors and Administrators, Doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns, that he the said *A. B.* his
Executors

Executors or Administrators, shall and will well and truly pay, or cause to be paid, unto the said C. D. his Executors, Administrators or Assigns, the said Sum of, &c. at the Days and Times, and in Manner and Form aforesaid, according to the true Intent and Meaning of these Presents. And also that he the said C. D. his Executors, Administrators and Assigns, shall and may at all Times after Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly have, hold, use, occupy, possess and enjoy, the said Goods and Premises above-mentioned and every of them, to his and their own proper Use and Uses for ever, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said A. B. his Executors or Administrators, or of any other Person or Persons whatsoever. And the said C. D. for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said A. B. his Executors, Administrators and Assigns, that he the said C. D. his Executors, Administrators and Assigns, shall and will immediately upon the Receipt of the said Sum of, &c. at the Days and Times above-mentioned, on the Request of the said A. B. deliver or cause to be delivered unto the said A. B. his Executors, Administrators Assigns, all and singular the Goods and Chattels above-mentioned (which are now received by the said C. D. of the said A. B.) in as good Case and Condition as the same and every of them are at this present Time. In Witness, &c.

A common Mortgage of Lands, for a Term of Years.

This Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part, Witnesseth, That the said *A. B.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof he doth hereby confess and acknowledge, He the said *A. B.* Hath granted, bargained and sold, and by these Presents doth grant, &c. unto the said *C. D.* All that Messuage or Tenement commonly called, &c. and also, &c. situate, lying and being in, &c. And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premisses, and of every Part and Parcel thereof, with the Appurtenances. To have and to hold the said Messuage or Tenement, Lands and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *C. D.* his Executors, Administrators and Assigns, for and during the Term of 500 Years next and immediately ensuing and following, and fully to be compleat and ended. Yielding and paying therefore yearly during the said Term one Pepper-Corn in and upon the Feast of St. *Michael* the Archangel, if demanded. Provided always and upon Condition That if the said *A. B.* his Heirs or Assigns do and shall well and truly pay or cause to be paid unto the said *C. D.* his Executors, Administrators or Assigns, the full Sum of, &c. in and upon, &c. next coming (or which will be in the Year of, &c.) without any Deduction or Abatement for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary, That then and from thence-

thenceforth these Presents, and every Thing herein contained, shall cease, determine and be void, any Thing herein contained to the contrary notwithstanding. And the said *A. B.* for himself, his Heirs and Assigns, Doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns, that he the said *A. B.* his Heirs or Assigns, shall and will well and truly pay or cause to be paid unto the said *C. D.* his Executors, Administrators and Assigns, the said full Sum of, &c. in and upon the said, &c. without any Deduction, as aforesaid, according to the true Intent and Meaning of these Presents. And also that he the said *C. D.* his Executors, Administrators and Assigns shall and may at all Times after Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly enter into, have, hold occupy, possess and enjoy all and singular the said Messuage or Tenement, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, for and during the Remainder of the said Term of 500 Years hereby granted, which shall be then to come and unexpired, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs and Assigns, and of all and every other Person and Persons whatsoever. And further that he the said *A. B.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Messuage or Tenement, and Premises above-mentioned, or any Part thereof, shall and will at any Time or Times after Default shall be made in Performance of the Proviso or Condition herein contained, make, do
and

and execute, or cause or procure to be made, done and executed, All and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever for the further, better and more perfect granting and assuring of All and singular the said Premisses above-mentioned, with the Appurtenances, unto the said C. D. To hold to him, his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years above granted, which shall be then to come and unexpired, as by the said C. D. his Executors, Administrators or Assigns, or his or their Counsel learned in the Law shall be reasonably devised or advised and required. And lastly, it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that until Default shall be made in Performance of the Proviso or Condition herein contained, he the said A. B. his Heirs and Assigns, shall and may hold and enjoy all and singular the said Premisses above-mentioned, and receive and take the Rents, Issues and Profits thereof to his and their own proper Use and Benefit ; any Thing herein contained to the contrary thereof notwithstanding. In Witness, &c.

A Mortgage in Fee.

This Indenture made, &c. Between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witnesseth, That the said A. B. for and in Consideration of the Sum of, &c. to him in Hand paid by the said C. D. the Receipt whereof the said A. B. doth hereby confess and
acknow-

acknowledge, He the said *A. B.* Hath granted, bargained, sold, aliened, released and confirmed, and by these Presents doth grant, &c. unto the said *C. D.* (in his actual Possession now being by Virtue of a Bargain and Sale to him thereof made for one whole Year, by Indenture bearing Date the Day next before the Day of the Date of these Presents, and by Force of the Statute for transferring of Uses into Possession) and to his Heirs and Assigns for ever, All that Messuage or Tenement, &c. situate, &c. together with all Gardens, Stables, Houses, &c. (which said Messuage, &c. was by the said *A. B.* purchased to him and his Heirs of, &c.) And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Premises above-mentioned, and every Part and Parcel thereof, And also all the Estate, Right, Title, Interest, Claim and Demand whatsoever of him the said *A. B.* of, in and to the said Premises, and of, in and to every Part and Parcel thereof, with the Appurtenances, And all Deeds, Evidences and Writings touching or concerning the said Premises above-mentioned, or any Part thereof. To have and to hold the said Messuage or Tenement, and all and singular other the Premises hereby granted and released, or mentioned or intended to be hereby granted and released, and every Part and Parcel thereof, with the Appurtenances, unto the said *C. D.* his Heirs and Assigns, to the only proper Use and Behoof of the said *C. D.* his Heirs and Assigns for ever. Provided always, and it is agreed by and between the said Parties to these Presents. That if the said *A. B.* his Heirs or Assigns do and shall well and truly pay or cause to be paid unto the said *C. D.* his Executors,

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Administrators or Assigns, the full Sum of, &c. in and upon, &c. next ensuing the Date of these Presents without any Deduction or Defalcation for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary, that then and from thenceforth these Presents and every Thing herein contained shall cease and be void, any Thing herein contained to the contrary notwithstanding. And the said *A. B.* for himself, his Heirs and Assigns doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns, that he the said *A. B.* his Heirs or Assigns shall and will well and truly pay or cause to be paid unto the said *C. D.* his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon, &c. next coming, without any Deduction, as aforesaid, according to the true Intent and Meaning of these Presents. And also that he the said *C. D.* his Heirs and Assigns shall and may from Time to Time, and at all Times after Default shall be made in the Performance of the Proviso or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy the said Messuage or Tenement and Premises above-mentioned, with the Appurtenances, without the Let, Suit, Trouble, Hindrance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs and Assigns, and of all and every other Person and Persons whatsoever. And further, that he the said *A. B.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premises above-mentioned, or any Part thereof, shall and will at any Time or Times after Default shall be made in Performance of the said Proviso or Condition

dirion herein contained, make, do and execute, or cause or procure to be made, done and executed, All and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better, and more perfect granting and assuring of All and singular the said Premisses above-mention'd, and of every Part and Parcel thereof, with the Appurtenances, unto the said C. D. his Heirs and Assigns, to the only proper Use and Behoof of the said C. D. his Heirs and Assigns, for ever, absolutely freed and discharged of and from the Proviso or Condition herein contained, and of and from all Equity of Redemption by Virtue or Colour thereof, according to the true Intent and Meaning of these Presents, as by the said C. D. his Heirs or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised or advised and required. And lastly, it is covenanted and agreed upon by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, that the said A. B. his Heirs and Assigns, shall and may at all Times, until Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly have, hold and enjoy, All and singular the said Premisses above-mentioned, and receive and take the Rents and Profits thereof to his and their own proper Use and Benefit; any Thing herein contained to the contrary notwithstanding. In Witness, &c.

An Assignment of a Mortgage.

This Indenture Tripartite made, &c. Between A. B. of, &c. of the first Part, C. D. of, &c.

&c. of the second Part, and *E. F.* of, *&c.* of the third Part. Whereas by Indenture bearing Date, *&c.* made between the said *A. B.* *&c.* of the one Part, and the said *C. D.* of the other Part, the said *A. B.* for and in Consideration of the Sum of 1000 *l.* of, *&c.* to him in Hand paid by the said *C. D.* the Receipt whereof the said *A. B.* did thereby confess and acknowledge, *&c.* He the said *A. B.* did grant, bargain and sell unto the said *C. D.* All that the Capital Messuage called or known by the Name of, *&c.* in the Parish of, *&c.* with all the Barns, Stables, Out-houses, Orchards, Gardens, Yards, Backsides, and Appurtenances thereunto belonging, And all that the Manor of, *&c.* with the Appurtenances in the said County of, *&c.* with the Royalties, Liberties, Court-Leet, and all that to a Court-Leet belongeth, and also all Perquisites of Courts, Quit-Rents, Fees, Fines, Amerciaments, Duties, Waifs, Estrays, Deodands, Goods of Felons, Forfeitures, Escheats, Emoluments, Franchises and Appurtenances whatsoever to the said Manor, *&c.* belonging or in any wise appertaining, And also all those Lands, Meadows and Pastures called, *&c.* then-tofore in the Possession of, *&c.* And also all Ways, Passages, Hedges, Hedge-Rows, Woods, Underwoods, Commons, Wastes, Rights, Privileges, Royalties, Fishings, Profits, and other Appurtenances whatsoever, to the said Manor of, *&c.* and, *&c.* and Premisses aforesaid, or any of them, belonging, or appertaining, or at any Time thentofore accepted, reputed or taken as Part, Parcel or Member thereof, And also the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of All and singular the said Manor

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and Premisses above-mentioned to be thereby granted, and of every Part and Parcel thereof, with the Appurtenances. To hold unto the said C. D. his Executors, Administrators and Assigns, for and during and unto the full End and Term of 500 Years from thence next and immediately ensuing and following, fully to be compleat and ended without Impeachment of or for any manner of Waste, at and under the yearly Rent of a Pepper-Corn: Which said recited Indenture was by a Proviso or Condition therein contained made defeasible on Payment by the said A. B. unto the said C. D. of the said Sum of 1000 l. and Interest at certain Days therein mentioned then to come, and now long since past, as in and by the said recited Indenture may more at large appear. And whereas all the Interest of the said 1000 l. hath been duly paid unto the Day of the Date hereof, so that there remains due to the said C. D. on the said recited Mortgage the said principal Sum of 1000 l. and no more. Now this Indenture Witnesseth, That the said C. D. for and in Consideration of the Sum of 1000 l. of, &c. to him in Hand paid by the said E. F. (by and with the Consent and Agreement of the said A. B. testified by his being a Party to, and signing and sealing of these Presents) the Receipt of which said Sum of 1000 l. He the said C. D. doth hereby confess and acknowledge, He the said C. D. with the like Consent, and by the Direction and Appointment of the said A. B. testified as aforesaid, Hath bargained and sold, assigned and set over, And by these Presents doth bargain, &c. unto the said E. F. All and singular the said Manor, Messuages, Lands, Tenements, Hereditaments and Premisses abovementioned to

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be granted in and by the said recited Indenture, with their and every of their Appurtenances, together with the said recited Indenture: And also all the Estate, Right, Title, Interest, Term of Years, Claim and Demand whatsoever, as well in Equity as in Law of him the said *C. D.* of, in and to the said Manor and Premisses, and of, in and to every Part and Parcel thereof, with the Appurtenances To have and to hold All and singular the said Manor, Messuages, Lands, Tenements, Hereditaments and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *E. F.* his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years above recited, which is yet to come and unexpired. And the said *C. D.* doth by these Presents, for himself, his Executors, Administrators and Assigns, covenant and grant to and with the said *E. F.* his Executors, Administrators and Assigns, That the said *C. D.* hath not done or committed any Act, Matter or Thing whatsoever whereby or wherewith the said Manor and Premisses hereby assigned, or any Part thereof, are, is, shall or may be charged or incumbered in Titie, Estate, or otherwise howsoever. And this Indenture farther witnesseth, That the said *A. B.* for the Considerations aforesaid, and for the better securing the Repayment of the said 1000 *l.* and Interest, and in Consideration also of the Sum of 5 *s.* &c. to him in Hand paid by the said *E. F.* the Receipt whereof is hereby acknowledged, He the said *A. B.* Hath granted, bargained and sold, released, ratified and confirmed, and by these Presents doth grant, &c. unto the said *E. F.* All and singular the said Manor, Messuages, Lands, Tenements,
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Hereditaments and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, And also all the Estate, Right, Title, Interest, Claim and Demand whatsoever as well in Equity as in Law of him the said *A. B.* of, in and to the said Manor and Premisses, and of, in and to every or any Part and Parcel thereof, with the Appurtenances. To have and to hold All and singular the said Manor and Premisses above-mentioned, and every Part and Parcel thereof, with their and every of their Appurtenances, unto the said *E. F.* his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years above recited, which is yet to come and unexpired, absolutely freed and discharged of and from the Proviso in the said recited Indenture contained, and of and from all Benefit and Equity of Redemption by Virtue or Colour thereof, or otherwise howsoever. Provided always, and upon Condition, That if the said *A. B.* his Heirs or Assigns do and shall well and truly pay, or cause to be paid, unto the said *E. F.* his Executors, Administrators or Assigns, the full and just Sum of 25 *l.* of, &c. in and upon the Day of, &c. next coming, and the further Sum of 1025 *l.* of, &c. in and upon, &c. which will be in the Year of our Lord, &c. without any Deduction, Defalcation or Abatement for Taxes, Assessments, or any other Impositions whatsoever either ordinary or extraordinary, imposed or to be imposed by any Act or Acts of Parliament, or otherwise howsoever, That then and at any time thenceafter, He the said *E. F.* his Executors or Administrators, shall and will at the Request, Costs and Charges, of the said *A. B.* surrender, assign, or otherwise transfer, All and singular the said Manor and

Premises, with the Appurtenances, unto the said *A. B.* his Heirs and Assigns, or to whom he or they shall appoint, in such manner as by Counsel learned in the Law shall be reasonably advised, So as the Person or Persons who is or are to make such Surrender or Assignment be not compellable by Force of these Presents to travel or go for the doing thereof from the Place or Places of his or their respective Habitation or Abode at the time of such Request, nor to enter into any further or more general Covenants than against him and themselves respectively, and his and their respective Acts. And then also He the said *E. F.* his Executors, Administrators or Assigns, shall and will redeliver unto the said *A. B.* his Heirs or Assigns, All and every the Deeds Evidences and Writings in the Schedule hereto annexed mentioned, safe, whole and uncanceled, any thing herein contained to the contrary thereof in any wise notwithstanding. And the said *A. B.* doth by these Presents, for himself, his Heirs and Assigns, covenant and grant to and with the said *E. F.* his Executors, Administrators and Assigns, That he the said *A. B.* his Heirs and Assigns, shall and will well and truly pay, or cause to be paid, unto the said *E. F.* his Executors, Administrators or Assigns, the said Sum of, &c. in and upon the said Day, &c. next coming, And also the said further full Sum of, &c. in and upon the said, &c. which will be in the said Year of our Lord, &c. without any Deduction as aforesaid, according to the true Intent and Meaning of these Presents. And also, That He the said *E. F.* his Executors, Administrators and Assigns, shall and may from time to time, and at all times after Default shall be made in Performance of the Proviso or Condition aforesaid,

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for and during all the Rest and Residue of the said Term of 500 Years above recited, which shall be then to come and unexpired, peaceably and quietly enter into, have, hold, occupy, possess and enjoy, All and singular the said Manor and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs and Assigns, and of all and every other Person or Persons whatsoever. And also, That he the said *A. B.* and his Heirs, and all and every other Person and Persons, and his and their Heirs, any thing having or claiming in the said Manor and Premises above-mentioned, or any Part thereof, shall and will from time to time, and at all times after Default shall be made in Performance of the Proviso or Condition aforesaid, at the Request of the said *E. F.* his Executors, Administrators or Assigns, make, do and execute, or cause or procure to be made, done and executed, All and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better and more perfect granting, conveying and assuring of All and singular the said Manor and Premises above-mentioned, with the Appurtenances, unto the said *E. F.* his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years above-mentioned, which shall be then to come and unexpired, freed and discharged of and from the Proviso or Condition herein contained, and all Benefit and Equity of Redemption by Virtue or Colour thereof, or otherwise howsoever, as by the said *E. F.* his Executors, Administrators or Assigns, or his or their Counsel learned in

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the Law shall be reasonably devised or advised and required. And, lastly, it is covenanted, granted, concluded and agreed upon by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, That until Default shall be made in Performance of the Proviso or Condition herein contained, He the said *A. B.* his Heirs, and Assigns, shall and may peaceably and quietly have, hold and enjoy, All and singular the said Manor and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, and receive and take the Rents, Issues and Profits thereof to his and their own proper Use and Benefit, any thing herein contained to the contrary thereof notwithstanding. In Witness, &c.

Another Assignment of a Mortgage, with a fresh Grant to the Mortgagee.

This Indenture Tripartite made, &c. Between *A. B.* of, &c. of the first Part, *C. D.* of, &c. of the second Part, and *E. F.* of, &c. of the third Part. Whereas by Indenture bearing Date, &c. made between the said *A. B.* of the one Part, and the said *C. D.* of the other Part, the said *A. B.* for the Considerations therein mentioned did demise, grant, bargain and sell unto the said *C. D.* his Executors, Administrators and Assigns, All that Messuage or Tenement, with the Appurtenances, situate, &c. in the Tenure of, &c. And also, &c. And also All and singular the Houses, Edifices, Buildings, Sheds, Shops, Stalls, Cellars, Sollars, Chambers, Rooms, Yards, Backsides, Waters, Lights, Easements, Commodities, Advantages, Emoluments and Hereditaments whatsoever to the said Messuage or Tenement,

nement, &c. belonging or in any wise appertaining, or to or with the same used, occupied or enjoyed, or accepted, reputed, taken or known as Part, Parcel or Member thereof, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of all and singular the said Premises, To hold to the said C. D. his Executors, Administrators and Assigns, from, &c. for and during and unto the full End and Term of 1000 Years from thence next ensuing and fully to be compleat and ended, without Impeachment of or for any Manner of Waste, under a Proviso or Condition nevertheless to be void on the said A. B. his Heirs, Executors, Administrators or Assigns paying to the said C. D. his Executors, Administrators or Assigns, the Sum of, &c. on, &c. then next ensuing, without any Deduction for Taxes, or other Impositions whatsoever: Which said Money was not paid according to the said Proviso or Condition, whereby the said Term became absolute in Law. And whereas there is now due and owing upon the said Mortgage to the said C. D. for Principal and Interest the Sum of, &c. Now this Indenture witnesseth, that for and in Consideration of the Sum of, &c. to the said C. D. in Hand paid by the said E. F. at or before the Sealing and Delivery of these Presents, by the Direction and Appointment of the said A. B. testified by his being a Party to, and signing and sealing of these Presents, and of the further Sum of, &c. to the said A. B. in Hand also paid by the said E. F. at or before the Sealing and Delivery of these Presents, the several and respective Receipts of which said several Sums of, &c. they the said C. D. and A. B. do hereby respectively acknowledge, and thereof

and therefrom, and from every Part and Parcel thereof, Do, and either of them doth clearly and absolutely acquit, release and discharge the said *E. F.* his Executors, Administrators and Assigns, and every of them for ever by these Presents, the said *C. D.* at the Desire and Request, and by and with the Consent, Direction and Appointment of the said *A. B.* and also the said *A. B.* Have, and each of them hath bargained, sold and assigned, and by these Presents do, and each of them doth bargain, sell and assign unto the said *E. F.* his Executors, Administrators and Assigns, All the said Messuage or Tenement, and all and singular other the Premises in and by the said recited Indenture demised and granted, or intended to be demised and granted by the said *A. B.* to the said *C. D.* as aforesaid, with all and every the Appurtenances, And also all the Estate, Right, Title, Term of Years, Possession, Property, Claim and Demand whatsoever of them the said *A. B.* and *C. D.* or either of them, of, in, to or out of the said hereby bargained or assigned Premises, or any Part thereof, in any wise howsoever, together with the said recited Indenture of Demise. To have and to hold the said Messuage or Tenement, and all and singular other the Premises herein before mentioned or intended to be hereby bargained, sold or assigned, with the Appurtenances, unto the said *E. F.* his Executors, Administrators and Assigns, from henceforth for and during all the Rest and Residue of the said Term of 1000 Years, in and by the said recited Indenture of Demise granted, yet to come and unexpired. And the said *A. B.* for the Considerations aforesaid, Doth for himself, his Heirs, Executors and Administrators, remise, release, and for ever quit-claim unto
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the said *E. F.* his Executors, Administrators and Assigns, the said Proviso or Condition contained in the said recited Indenture of Demise, and all his Right, Title and Equity of Redemption, of, in or to the said bargained and assigned Premises, or any Part thereof, by Virtue of the said recited Indenture of Demise, or the said Proviso or Condition therein contained, or otherwise howsoever. Subject nevertheless to the Proviso or Agreement herein contained for the Assignment of the same Premises. And the said *C. D.* for himself, his Executors, Administrators and Assigns, Doth covenant, promise and grant to and with the said *E. F.* his Executors, Administrators and Assigns by these Presents, that he the said *C. D.* hath not at any Time or Times made, done, committed, or wittingly or willingly suffered any Act, Matter or Thing whatsoever, whereby, or by Reason or Means whereof the said hereby bargained and assigned Premises, or any Part thereof, is, are, shall or may be charged or impeached in Title, Charge, Estate, or otherwise howsoever. And whereas the said *A. B.* by Virtue of, &c. is legally entitled to a Messuage or Tenement situate, &c. And held under, &c. for the Remainder of a Term of, &c. Now this Indenture further witnesseth, that the said *A. B.* for the Considerations aforesaid, Hath demised and to Farm letten, and by these Presents doth demise, &c. unto the said *E. F.* the said last mentioned Messuage or Tenement, with the Appurtenances, &c. and all Ways, Passages, Yards, Lights, Easements, Privileges, Advantages and Appurtenances whatsoever to the same belonging or appertaining. To have and to hold the said last mentioned Messuage or Tenement

nement and Premises to the said *E. F.* his Executors, Administrators and Assigns, from the Day of the Date hereof, for and during all the Rest and Residue of the said Term of, &c. yet to come and unexpired, At and under the yearly Rent of, &c. payable at, &c. to the said *A. B.* his Executors, &c. Subject nevertheless to the Proviso or Condition herein after contained for making void the said Demise, &c. (that is to say) Provided always, and the said *E. F.* for himself, his Executors, Administrators and Assigns, doth hereby covenant, promise and agree to and with the said *A. B.* his Executors, Administrators and Assigns, That if the said *A. B.* his Heirs, Executors, Administrators or Assigns, do and shall well and truly pay or cause to be paid unto the said *E. F.* his Executors, Administrators or Assigns, the Sum of, &c. in and upon, &c. without any Deduction, Defalcation or Abatement of or for any Manner of Taxes, Assessments, Charges or Impositions whatsoever by Authority of Parliament, or otherwise howsoever, That then and from thenceforth the said Demise hereby made of the said last mentioned Messuage or Tenement, with the Appurtenances, shall cease, determine, and be void, any thing herein contained in any wise notwithstanding. And that upon or at any Time after such Payment shall be made, as aforesaid, he the said *E. F.* his Executors, Administrators or Assigns' shall and will upon the Request and at the Charges of the said *A. B.* his Heirs or Assigns, surrender or release to him and them the said first above-mentioned Messuage or Tenement, with the Appurtenances, or otherwise assign the same, and all the Estate and Interest of the said *E. F.* his Executors, Administrators or Assigns,

Assigns, of, in or out of the same, to such Person or Persons as he the said *A. B.* his Heirs or Assigns shall direct or appoint, freed and discharged from all Incumbrances by, from or under the said *E. F.* his Executors, Administrators or Assigns, or any of them. And the said *A. B.* for himself, his Heirs, Executors and Administrators, doth covenant, promise and grant to and with the said *E. F.* his Executors, Administrators and Assigns by these Presents, in Manner following (that is to say) That he the said *A. B.* his Heirs, Executors, Administrators or Assigns, shall and will well and truly pay or cause to be paid unto the said *E. F.* his, &c. the said Sum of, &c. on the Day, &c. above limited and expressed in the Proviso or Condition herein contained for the Payment thereof, according to the true Intent and Meaning of the said Proviso or Condition, without any Deduction or Abatement whatsoever as aforesaid. And that the said recited Indenture of Demise is a good and sufficient Demise in the Law of and for the said Premisses with the Appurtenances therein mentioned to be demised for all the Residue of the said Term of 1000 Years thereby granted, and now is and standeth in full Force. And that he the said *E. F.* his Executors, Administrators and Assigns, in case any Default shall be made in Payment of the said Money, or any Part thereof, contrary to the Proviso and Condition aforesaid, and the true Intent and Meaning of these Presents, shall and lawfully may at all Times afterwards peaceably and quietly have, hold, use, occupy, possess and enjoy, All and singular the said hereby assigned and demised Premisses, with the Appurtenances, and every Part and Parcel thereof respectively, and

and receive and take the Rents, Issues and Profits thereof respectively to his and their own proper Use and Uses during all the Rest and Residue which shall be then to come and unexpired, of the said Terms of 1000 Years, and, &c. without any Let, Suit, Trouble, Disturbance, Eviction, Expulsion, Condition, Claim or Demand whatsoever, of or by the said *A. B.* his Heirs or Assigns, or any other Person or Persons whatsoever. And that he the said *A. B.* and his Heirs, and all and every other Person or Persons having, claiming or deriving, or which shall or may have, claim or derive any Manner of Estate, Right, Title or Inheritance of, in or out of the said hereby assigned or demised Premises respectively, or any Part or Parcel thereof, shall and will from Time to Time, and at all Times from and after Breach or Default shall be made in the Proviso or Condition aforesaid, upon the reasonable Request, and at the proper Costs and Charges in the Law of the said *E. F.* his Executors, Administrators or Assigns, make, do, acknowledge, levy, execute and suffer, or cause and procure to be made, &c. all and every such further and other lawful and reasonable Act and Acts, Thing and Things, Deeds, Grants, Releases, Conveyances and Assurances in the Law whatsoever, for the further, more perfect and absolute conveying, assuring, corroborating and confirming of the said hereby assigned and demised Premises respectively, with their Appurtenances, unto the said *E. F.* his Executors, Administrators or Assigns, for and during all the Residue and Remainder of the said several Terms above-mentioned, which shall be then to come and unexpired, of and in the said Premises respectively,

tively, as by the said *E. F.* his Executors, Administrators or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised, advised or required. And the said *E. F.* for himself, his Executors, Administrators and Assigns, Doth hereby covenant and promise to and with the said *A. B.* his Heirs and Assigns, That he the said *A. B.* his Heirs, Executors, Administrators and Assigns shall and may peaceably and quietly hold and enjoy the said Messuages or Tenements and Premises, and receive the Rents and Profits thereof to his and their own proper Use and Behoof until Breach or Default shall be made in the Proviso or Condition aforesaid without any Account to be made or given for or concerning the same to the said *E. F.* his Executors, Administrators or Assigns. In Witness, &c.

A Collateral Security.

This Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part. Whereas the said *A. B.* stands justly indebted to the said *C. D.* in the Sum of, &c. principal Money secured by one Indenture bearing equal Date with these Presents, and made between, &c. payable and to be paid at the End of, &c. with lawful Interest for the same. Now this Indenture witnesseth, that the said *A. B.* for the better securing and more sure Payment of the said, &c. with the Interest thereof, And in Consideration also of the Sum of 5 s. &c. to him in Hand paid by the said *C. D.* the Receipt whereof is hereby acknowledged, He the said *A. B.* hath granted, bargained and sold, and by these Presents doth grant,

grant, &c. unto the said C. D. All and singular the Messuage, Tenement or Farm commonly called and known by the Name of, &c. together with all Lands, &c. thereunto belonging, with the Appurtenances, situate, &c. And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Premisses above-mentioned and of every Part and Parcel thereof, with the Appurtenances. To have and to hold all and singular the said Messuage or Tenement, Lands and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said C. D. Party to these Presents, his Executors, Administrators and Assigns, for and during the Term of 1000 Years next and immediately ensuing and following, fully to be compleat and ended. Yielding and paying therefore yearly during the said Term one Pepper-Corn in and upon the Feast of St. Michael the Archangel only, if demanded. Provided always, and upon Condition, that if the said A. B. his Heirs or Assigns, do and shall well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the said Sum of, &c. with lawful Interest therefore in and upon, &c. next, according to the Proviso or Condition contained in the said recited Indenture, Then these Presents, and every Thing herein contained, shall cease, determine, and be void, any Thing herein contained to the contrary notwithstanding. And the said A. B. for himself, his Heirs and Assigns, Doth covenant and grant to and with the said C. D. Party to these Presents, his Executors, Administrators and Assigns, that he the said A. B. his Heirs or Assigns, shall and will well and truly pay or
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cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon the said Day of &c. next, according to the true Intent and Meaning of these Presents. And also that he the said C. D. his Executors, Administrators and Assigns, shall and may at all Times after Default shall be made in Performance of the Proviso or Condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy, All and singular the said Messuage, Farm, Lands and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, for and during the Remainder of the said Term of 1000 Years hereby granted, which shall be then to come and unexpired, without the Let, Trouble, Hindrance, Molestation, Interruption and Denial of him the said A. B. his Heirs and Assigns, and of all and every other Person and Persons whatsoever. And further that he the said A. B. and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premises above-mentioned, or any Part thereof, shall and will at any Time or Times after Default shall be made in Performance of the Proviso or Condition herein contained, make, do and execute, or cause or procure to be made, &c. all and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better, and more perfect granting and assuring of all and singular the said Premises above-mentioned, with the Appurtenances, unto the said C. D. Party to these Presents, To hold to him, his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term

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Term of 1000 Years above-mentioned, which shall be then to come and unexpired, as by the said C. D. his Executors, Administrators or Assigns, or his or their Counsel learned in the Law shall be reasonably devised or advised and required. And lastly, it is covenanted, granted, concluded and agreed upon by and between the said Parties to these Presents, that until Default shall be made in Performance of the Proviso herein contained, he the said A. B. his Heirs or Assigns, shall and may hold and enjoy all and singular the said Premises above-mentioned, and receive and take the Rents, Issues and Profits thereof to his and their own proper Use and Benefit, any Thing herein contained to the contrary thereof in any wise notwithstanding. In Witness, &c.

Of Releases and Foreclosing of Equity of Redemption, on Mortgages, &c.

I Have already mentioned the Statutes which occasion a Forfeiture of the Equity of Redemption upon Mortgages ; so that I shall here proceed to Foreclosing the Equity, on Default in Payment of the Money borrowed.

The Mortgagee, if he be desirous to bar the Equity of Redemption, may oblige the Mortgagor either to pay what is due, or be Foreclosed of his Equity of Redemption, which the Court

Court of Chancery will order in convenient Time.

The Chancery cannot shorten the Time of Payment of the Money, where it is limited by express Covenant and Agreement of the Parties, but may lengthen it; and then upon Nonpayment the Practice is to Foreclose the Equity of Redemption of the Mortgagor, and to make the Estate absolute in the Mortgagee. *2 Ventr.* 365.

A Fine and Non-Claim will bar Equity of Redemption: But in a common Mortgage a Covenant to restrain Equity of Redemption shall not be regarded in Chancery. *Ibid.*

To Foreclose the Equity on Non-payment of the Redemption-Money, a Bill in Chancery is drawn after the following Manner.

A Bill in Chancery to Foreclose Equity of Redemption.

To the Right Honourable Thomas Earl of Macclesfield, &c. Lord High Chancellor of Great Britain,

Humbly complaining,

Sheweth unto your Lordship, That whereas C. D. of, &c. having Occasion of Money, did on or about, &c. borrow and take up at Interest of your Orator the Sum of 1000 l. and for securing the Repayment thereof with Interest in and by one Indenture bearing Date, &c. made between, &c. Did demise, grant, &c. All that Messuage, &c. To hold the said Messuage, &c. unto your said Orator for the Term of, &c. as in and by the said Indenture in your Orator's Custody ready to be produced, will more fully appear. And your Orator further sheweth un-

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to your Lordship that the said C. D. hath not only failed in Payment of the said 1000 l. but hath suffered the Interest thereof ever since to run greatly in Arrear, altho' your Orator hath often requested and desired him to pay the said principal Money, or at least the Interest thereof, as the same became due, which in all Equity and good Conscience he ought to have done. But now so it is, may please your Lordship, that the said C. D. hath hitherto neglected and taken no Care to pay either the principal Money or the Interest, and hath endeavoured to delay your Orator all he can by fair Promises, wherewith your Orator having been put off a long Time, intended to have actually Entered on the said mortgaged Premisses, and to have recovered the Possession thereof at Common Law. But upon Enquiry your Orator finds, that all or the greatest Part of the said mortgaged Premisses have been leased out by the said C. D. precedent to your Orator's Title for long Terms of Years, either absolute or determinable upon Lives under small Rents to sundry Persons to your Orator unknown (whose Names, when discover'd, your Orator prays may be made Parties to this Suit, with apt Words to charge them) so that your Orator can't bring any Action at Law for Recovery of the Possession of the said mortgaged Premisses, yet well hoped he might have received the Rents and Profits thereof towards Satisfaction of the said Debt and Interest. But the said C. D. having the Counterparts of the several Leases in his own Custody refuses to discover upon what Terms and under what Rents the same were granted or when payable, intending as much as in him lies to defeat your Orator of his said Debt and Interest, and doth
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not only refuse to pay your said Orator the said principal Sum of 1000 l. or any Interest therefore, but hath also prevailed with the several Tenants of the mortgaged Premises not to Attorn Tenants to your said Orator, or to pay him any Rents due or payable for the same. And your Orator not having any Counterparts of the several Leases, cannot bring any Action for Recovery of the several Rents, or any Part of them, whereby your Orator is likely to be deprived of his just Debt and Interest, without the Aid and Assistance of your Lordship in this Honourable Court. In tender Consideration whereof, and for as much as your Orator hath no Remedy at Law to get the Possession of the said Premises, or to compel the several Tenants to Attorn Tenants to your Orator to pay him their respective Rents as the same shall become due, or to enforce the Payment of the said Debt and Interest, or to Foreclose the said C. D. of his Equity of Redemption of the said mortgaged Premises but in this Honourable Court, and the rather for that the said C. D. gives out, that if your Orator should be admitted into the Possession, or into the Receipts of the Rents and Profits thereof, yet that your Orator shall be but in the Nature of a Bailiff, for that he can call your Orator to Account at Pleasure. To the End therefore that the said C. D. and the rest of the Confederates, when discovered, may true and perfect Answer make to all and singular the said Premises, and particularly that the said C. D. may discover whether he did not borrow of your Orator the said Sum of 1000 l. and whether such Security was not made and duly executed, as the same is herein before set forth for securing the Repayment

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thereof with Interest. And whether the said Sum of 1000 *l.* and all the Interest thereof ever since the Day, &c. doth not remain due and owing to your said Orator, or how much thereof is yet owing. And that the said *C. D.* may also set forth and discover what Leases or other Incumbrances have been granted on or affect the said Premises, or any Part thereof, and may also set forth the Dates and Contents of such Leases and Incumbrances respectively, and by whom made, upon what Terms, for what Consideration, and under what Rents, and may be ordered to deliver the Counterparts of the said several Leases to your Orator to enable him to recover the several Rents due thereupon. And to the End the said several Tenants may be Ordered and Decreed to attorn Tenants to your Orator, and pay your Orator their respective Rents for the future, as they shall become due. And to the End the said *C. D.* may be Decreed to pay your Orator his Principal and Interest with his Costs by a certain Day to be prefixed by this honourable Court; Or in Default thereof that your Orator may by Decree of this Court hold and enjoy all and singular the said mortgaged Premises freed and discharged of all Equity, Power and Benefit of Redemption which the said *C. D.* or any Person claiming by, from or under him may or might challenge or claim to have of, in or unto the said Premises, or any Part thereof: And that the said *C. D.* may also by the Decree of this Court be wholly Foreclosed and excluded from all Equity of Redemption of the said mortgaged Premises, and may also be ordered to make further Assurance of the same Premises to your Orator, his Executors, Administrators

strators and Assigns, And that your Orator may be further relieved in the Premisses according to Equity and good Conscience.

May it please your Lordship, the Premisses considered, to grant to your Orator his Majesty's Writ or Writs of *Subpoena* to be directed to the said C, D. (and other his Confederates when discovered) thereby commanding them and every of them at a certain Day, and under a certain Penalty therein to be limited, personally to be and appear before your Lordship in this Honourable Court, then and there to answer all and singular the Premisses, and further to stand to, perform and abide such further Order, Direction and Decree therein, as to your Lordship shall seem meet.

And your Orator shall ever Pray, &c.

After Answer is put in to the aforesaid Bill, and a Decree obtained in Favour of the Mortgagee, a Master in Chancery is to certify what is due for Principal, Interest and Costs, which is to be paid at a Time prefix'd by the Decree, whereupon the Premisses is to be reconveyed to the Mortgagor; or in Default of Payment, the Mortgagor is to be Foreclosed from all Equity of Redemption, and convey the Premisses to the Mortgagee, &c.

This is the Purport of the Proceedings on a Decree in Chancery for Foreclosing the Equity of Redemption on a Mortgage: And here follows a Release of the Equity and Benefit of Redemption, pursuant to a Decree.

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*A Release of Equity of Redemption of Lands mortgaged,
made in Performance of a Decree in Chancery, &c.*

This Indenture made, &c. between *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part. Whereas by Indenture bearing Date, &c. made between the said *A. B.* of the one part, and the said *C. D.* of the other part, He the said *A. B.* for the Considerations therein mentioned, did demise, grant, bargain and sell unto the said *C. D.* All that Messuage, lying and being, &c. And also all that Parcel of Meadow or Pasture Ground lying in, &c. containing, &c. and then in the Tenure of, &c. under the yearly Rent of, &c. And also all that, &c. And All and singular Wastes, Ways, Water-courses, Common of Pasture, Hereditaments, Profits, Easements and Appurtenances whatsoever to the said Premises, or any of them, belonging, or in any wise appertaining, or therewith used, occupied, or enjoyed, reputed and taken as Part, Parcel, or Member of them, or any of them, And the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of All and singular the above-mentioned Premises, and of every Part and Parcel thereof. And all Rents and other Profits reserved, or from thenceforth payable upon any Lease or Leases thereof, or of any Part thereof, And all the Estate, Right, Title, Interest, Use, Property, Claim and Demand whatsoever, either in Law or Equity, of him the said *A. B.* of, in or to all or any of the said Premises, or of, in or to any Part or Parcel thereof, with their and every of their Appurtenances. To be had and holden unto the said *C. D.* his Executors, Administrators and Assigns, from
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the Day before the Day of the Date of the said Indenture, for and during, and unto the full End and Term of 99 Years from thence next ensuing, and fully to be compleat and ended, without Impeachment of or for any manner of Waste, At and under the yearly Rent of one Pepper-Corn, payable on, &c. if demanded. In which said Indenture is contained a Proviso or Condition nevertheless, That if the said *A. B.* his Heirs, Executors and Administrators, or any of them, should pay, or cause to be paid, unto the said *C. D.* his Executors, Administrators or Assigns, the Sum of, &c. with lawful Interest for the same, at certain Days and Times in the said Indenture mentioned, That then the said Indenture should be void, as in and by the said Indenture (Relation being thereunto had) more at large appears. And whereas the said Sum of, &c. nor any Part thereof, or any Interest for the same, was not paid at the Times appointed for the Payment thereof, nor at any Time since. Whereupon the said *C. D.* exhibited his Bill into the High Court of *Chancery* against the said *A. B.* thereby praying that the said *A. B.* might be Decreed to pay the Mortgage Money and Interest unto the said *C. D.* or that he might be debarred and foreclosed of all Equity of Redemption of the mortgaged Premisses. To which Bill the said *A. B.* appeared, &c. And whereas by a Decree, or decretal Order, made in the said High Court of *Chancery* between the said *C. D.* Complainant, and the said *A. B.* Defendant, bearing Date, &c. it was ordered and decreed, That upon the said *A. B.*'s Payment of what, &c. one of the Masters of the said Court should certify to be due to the said *C. D.* for Principal, Interest and Costs; by the first Day of the then next Term the said *C. D.*

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should reconvey the said mortgaged Premisses to the said *A. B.* or whom he should appoint, free of all Incumbrances done by him, or any claiming by, from or under him. But in Default of the said *A. B.*'s Payment of what the said Master should certify to be due to the said *C. D.* for Principal, Interest and Costs, as aforesaid, then it was ordered and decreed, That the said *A. B.* should be absolutely Foreclosed and debarred from all Equity of Redemption, and deliver upon Oath all Deeds and Writings that he had, or could come by, that related to the Premisses; And also convey all the Right, Title and Interest which he had in the Premisses unto the said *C. D.* in such manner as the said Master should direct. And whereas the said Master in Pursuance of the said Order made his Report, bearing Date, &c. last past, whereby he certified, that there was due to the said *C. D.* the Sum of, &c. and appointed the said *A. B.* to pay the same unto him on, &c. last past, as by the said Decree, or decretal Order, and Report more at large appears. And whereas the said *A. B.* hath not paid the said, &c. nor any Part thereof, according to the said Order and Report. Now this Indenture witnesseth, That the said *A. B.* in Obedience to, and in Pursuance of the said Decree, and for and in Consideration of the Sum of 5 s. of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof he doth hereby acknowledge, Hath granted, released and confirmed, and by these Presents doth grant, &c. unto the said *C. D.* his Executors, Administrators and Assigns, the said Messuage or Tenement, and several Pieces and Parcels of Meadow and Pasture Ground above-mentioned, with their and every of their Rights, Members and Appurtenances, and

And the Reversion and Reversions, Remainder and Remainders thereof, And also all the Estate Right, Title and Interest, both in Law and Equity, of the said *A. B.* in and to the same and every Part and Parcel thereof, together with all Deeds, Evidences and Writings touching and concerning the said Premises only, and true Copies of all such as concern the same with other Lands. To have and to hold the said Messuage or Tenement, and several Pieces of Meadow and Pasture Ground, with the Appurtenances, and All and singular other the Premises hereby granted and released, or meant, mentioned, or intended to be hereby granted and released unto the said *C. D.* his Executors, Administrators and Assigns, from henceforth, for and during all the Rest and Residue of the said Term of 99 Years yet to come, absolutely Foreclosed and debarred of and from the Proviso of Redemption in the said recited Indenture mentioned, and from all Benefit and Equity of Redemption whatsoever. And the said *A. B.* for himself, his Heirs, Executors and Administrators, doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns, by these Presents, That he the said *A. B.* and his Heirs, shall and will at the Request, Costs and Charges in the Law, of the said *C. D.* his Executors, Administrators or Assigns, from time to time, and at all times hereafter during the Space of seven Years next ensuing, make, do and execute, or cause or procure to be made, done and executed, All and every such further and other lawful and reasonable Act and Acts, Thing and Things, Assurance and Assurances in the Law whatsoever, for the further and better conveying and assuring of the said Premises

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to the said C. D. his Executors, Administrators and Assigns, as by the said C. D. his Executors, Administrators and Assigns, shall be devised, advised and required, So as the said A. B. or such Person as shall be required to do the same, be not compelled or compellable to travel above seven Miles from the Place of his or their usual Place of Residence, and so as the same contain no farther Warranty than is in these Presents. In Witness, &c.

A Release of Equity of Redemption, without any Proceedings in Chancery.

To all People, &c. Greeting. Whereas by Indenture bearing Date, &c. made between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, He the said A. B. in Consideration of the Sum of, &c. therein mentioned, to be paid by the said C. D. and which was accordingly paid, did grant, bargain, sell and demise unto the said C. D. All that Messuage, &c. situate, &c. And the Reversion and Reversions, Remainder and Remainders of All and singular the said Premises, and of every Part and Parcel thereof, To be had and holden unto the said C. D. his Executors, Administrators and Assigns, from the Day next before the Day of the Date of the said recited Indenture, unto the full End and Term of 500 Years from thence next ensuing, and fully to be compleat and ended, without Impeachment of or for any manner of Waste, At and under the yearly Rent of one Pepper-Corn, payable upon the Feast of, &c. (if the same should be demanded:) Which said recited Indenture was by a Proviso or Condition therein contained made defeasible on Payment of the Sum of,
 &c.

£c. at a Day long since past, as in and by the same indenture may more fully appear: And whereas the said Sum of, *£c.* or any Part thereof, was not paid upon the Day mentioned for the Payment of the same in the said Proviso, but the same, together with a large Sum more for Interest amounting in the whole to, *£c.* remains due to the said C. D. And whereas the said A. B. is satisfied that the said Moneys due to the said C. D. on the said recited Mortgage is the full Value of the said mortgaged Premises, and the said A. B. is not able to redeem the same, (or that the said C. D. hath offered to pay to the said A. B. the Sum of, *£c.* to make the said Sum of, *£c.* the full Value, *£c.*) Now know ye therefore by these Presents, That the said A. B. in Consideration thereof, *£c.* and for quieting the said C. D. in the Possession and Enjoyment of the said Messuage and Premises, and for extinguishing all Right of Equity of Redemption of the said mortgaged Premises, He the said A. B. Hath remised and released, and by these Presents doth remise, *£c.* unto the said C. D. his Executors, Administrators and Assigns, the Proviso or Condition in the said recited Indenture contained, And all Benefit and Equity of Redemption of the said Messuage, Tenement and Premises, by Virtue or Colour thereof, or otherwise howsoever; and also all Covenants, Clauses and Agreements in the same Indenture compriz'd, which on the Part and Behalf of the said C. D. his Executors, Administrators or Assigns, were to have been, or are, or ought to be performed. And further, the said A. B. for the Considerations aforesaid, and in Consideration also of the Sum of, *£c.* to him in Hand paid by the said C. D. the Receipt whereof

whereof is hereby acknowledged, He the said *A. B.* Hath granted, bargained and sold, released, ratified and confirmed, and by these Presents doth grant, &c. unto the said *C. D.* All and singular the said Messuage, Tenement and Premises above recited to have been granted to the said *C. D.* and every Part and Parcel thereof, with the Appurtenances, And also the Reversion and Reversions, Remainder and Remainders, Rents and Services thereof, and of every Part and Parcel thereof, with the Appurtenances, And also all the Estate, Right, Title, Claim and Demand whatsoever, as well in Equity as in Law of him the said *A. B.* of, in and to the said Messuage and Premises, and of, in and to every Part and Parcel thereof, with the Appurtenances. To have and to hold All and singular the said Messuage, Lands, Tenements, Hereditaments and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *C. D.* his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 500 Years above recited, which is yet to come and unexpired, Freely and clearly acquitted and discharged of and from all Benefit and Equity of Redemption whatsoever. And the said *A. B.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *C. D.* his Executors, Administrators and Assigns, That he the said *C. D.* his Executors Administrators and Assigns, shall and may from time to time, and at all times during the Remainder of the said Term of 500 Years above recited, which is yet to come and unexpired, peaceably and quietly have, hold, occupy, possess and enjoy, All and singular the said Messuage, &c. and every Part and Parcel

Parcel thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of him the said *A. B.* his Heirs and Assigns, and of all and every other Person and Persons whatsoever claiming or to claim, by, from, or under him. In Witness, &c.

*Of DEFEAZANCES, &c. and
Precedents of Writings of that
Kind.*

A Defeazance is a Condition relating to a Deed, which being performed, the Act is defeated and made void. 1 *Inst.* 236.

There is this Difference between a common Condition and a Defeazance; a Condition is inserted in the Deed, and a Defeazance is usually by it self relating to another Deed: And to the making a good Defeazance, the following Things are necessary; it must recite the Deed it relates to, or at least the most material Part of it; it must be made between the same Persons that were Parties to the first Deed; and be made at the Time or after the first Deed, not before it; and it must be of a Thing defeazible: But herein you are to observe, that Inheritances executed by Livery, &c. cannot be defeated afterwards, though they may at the Time of the Feoffment, &c. 1 *Inst.* 237. 1 *Rep.* 113.

Inheritances executory may be defeated at the Time, or at any Time afterwards, as Leases for Years, Rents, Annuities, Covenants, Conditions, &c. (by mutual Consent of Parties.)

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And so the Law is of other Things executory, as Statutes, Recognizances, Obligations, Judgments, &c. which are most commonly subjected to Defeazance afterwards. Estates in Tail, or for Life, &c. are such as may not be defeated but at the Time of making the Conveyance. *Co. Lit.* 237.

A Defeazance is a conditional Release, and the Diversity between the Defeazance of a Thing actually vested, and of a Thing that is meerly executory, is this; in a Feoffment of Lands the Condition ought to be contained in the same Charter of Feoffment, for by the Feoffment the Estate of the Land is vested and executed in the Feoffee; but it is otherwise in case of Judgments, Obligations, &c. But if a Man acknowledge a Statute to another, and enters into Defeazance, that if his Lands in the County of, &c. should be Extended, the Statute should be void, the Defeazance will be good, and not repugnant, because it's by another Deed; but the Condition of a Bond not to sue the Obligation is void. *Moor* 1035.

Several Bonds were sealed for the Payment of Money, and after by Indenture the Plaintiff agreed with the Defendant, that if the Defendant should pay to his Daughter 500 *l.* and do other Things, &c. that all the Obligations shall be void and delivered up; it was agreed this was a good Defeazance of the Obligation; but for other Faults in the Plea, &c. Judgment *pro Quer'* — *Bridgm. Rep.* 116. A Bill is drawn for 50*l.* with Covenant to pay it when such Accounts are stated, &c. the Covenant works as a Defeazance. 2 *Keb.* 624.

A. B. in *Audita Querela* upon a Statute surmises that there was an Indenture of Defeazance, if he
paid

paid yearly for six Years 50 *l.* to one C. D. at the Feasts of, &c. at such a Place, the Statute should be void; and avers that it was to C. D.'s Use, that he tendered at every of the said Feasts 50 *l.* at the Place, but that C. D. was not there to receive it: *Per Cur'*. Though C. D. was a Stranger to the Recognizance, yet as it is averred to be made to his Use, he ought to be ready at the Place to receive it, otherwise the Recognizance is not forfeit, &c. *Cro. Jac.* 13, 14.

If a Man makes a single Bond, or acknowledges a Statute or Recognizance, and afterwards a Defeazance is made for the Payment of a lesser Sum at a Day; if the Obligor or Conusor tender the lesser Sum at the Day, and the Obligee or Conusee refuseth it, he shall never have any Remedy by Law to recover it, because it is no Parcel of the Sum contain'd in the Obligation, Statute, &c. but inserted in the Defeazance made at the Time or after the Obligation, &c. And in this Case in pleading of the Tender and Refusal the Party shall not be driven to plead that he is yet ready to pay the same, or to tender it in Court. And if a Man make an Obligation with Condition for the Delivery of Corn, &c. (which is collateral to the Obligation, and no part of it) a Tender and Refusal is a perpetual Bar. *Co. Lit.* 207.

A Man without a Defeazance may plead that the Statute was acknowledged for Payment of a lesser Sum. 1 *Brownl.* 51. A Defeazance unless made the same Day of a Statute, and delivered *uno flatu*, it is said cannot be pleaded in Bar. 1 *Reb.* 111.

A Statute, &c. may be defeazanced on Condition of performing a Will, and paying Legacies, &c. to other Persons; but a Man can-

not make a Defeazance of a Judgment before it is given; though the Party may have Remedy on Writ of Covenant, &c. 1 Cro. 837.

A Defeazance upon a Judgment.

This Indenture made, &c. between *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part. Whereas the said *C. D.* in and by one Obligation or Writing obligatory, bearing Date, &c. doth stand bound to the said *A. B.* in the Sum of, &c. conditioned for the Payment of the Sum of, &c. on, &c. as by the said recited Obligation and the Condition thereof more at large appears. And whereas the said *A. B.* as a further Security for the Payment of the said Sum of, &c. according to the Intent and Meaning of the said recited Obligation in *Easter Term* last past in his Majesty's Court of King's-Bench at *Westminster*, hath obtained and recovered against the said *C. D.* one Judgment for, &c. besides Cost of Suit, as by the Records of the said Court appeareth. Now this Indenture witnesseth, That it is agreed by and between the said Parties to these Presents, and the said *A. B.* doth, for himself, his Executors and Administrators, covenant, grant and agree to and with the said *C. D.* his Executors and Administrators, by these Presents, That if the said *C. D.* his Heirs, Executors, Administrators or Assigns, do and shall well and truly pay, or cause to be paid, unto the said *A. B.* his Executors, Administrators or Assigns, the aforesaid Sum of, &c. at the Days and Times above-mentioned, in Discharge of the said recited Obligation, That then he the said *A. B.* his Executors or Administrators, shall and will, upon Request, after such Payment made,
and

and at the Costs and Charges of the said C. D. his Executors or Administrators, in due Form acknowledge Satisfaction upon Record of and for the said Judgment. And that he the said A. B. his Executors or Administrators, shall not, before Default of Payment shall be made of the said Sum of, &c. at the Days and Times above-mentioned, Sue or take forth any Writ or Process of Execution against the said C. D. his Heirs, Executors or Administrators, or his or their Lands, Tenements, Goods or Chattels, or any of them, by or upon the said Judgment. In Witness, &c.

A Defeazance of a Statute-Staple.

This Indenture made, &c. Between A. B. of, &c. of the one part, and C. D. of, &c. of the other part. Whereas the said C. D. by a certain Writing or Recognizance in the Nature of a Statute-Staple, bearing Date the Day of the Date hereof, taken and acknowledged before, &c. Lord Chief Justice of his Majesty's Court of Common Pleas at *Westminster*, became bound to the said A. B. in the Sum of, &c. payable as by the said Statute is expressed, as in and by the said Statute (Relation being thereunto had) may more at large appear. Now this Indenture witnesseth, That it is covenanted, granted, concluded and agreed upon, by and between the said Parties to these Presents, And the said A. B. for himself, his Executors, Administrators and Assigns, doth covenant and grant to and with the said C. D. his Executors, Administrators and Assigns, That if the said C. D. his Heirs, Executors, Administrators and Assigns, or any of them, do and shall, during the Space of, &c.

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next

next coming, well and truly content, satisfy and pay, or cause to be paid, unto the said *A. B.* his Executors, Administrators or Assigns, the Sum of, &c. And also if the said *C. D.* his Executors, Administrators or Assigns, or any of them, do and shall well and truly content, satisfy and pay, or cause to be paid, to the said *A. B.* his Executors, Administrators or Assigns, or some of them, the further full Sum of, &c. in and upon, &c. Then the said *A. B.* his Executors, Administrators or Assigns, shall and will deliver up the said Statute to the said *C. D.* his Heirs, Executors, Administrators or Assigns, to be cancelled and made void. In Witness, &c.

A Defeazance of a Statute-Merchant, and of a Conveyance, &c.

This Indenture made, &c. Between *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part. Whereas the said *C. D.* in and by one Statute-Merchant bearing Date, &c. and acknowledged before, &c. Mayor of the City of, &c. and Keeper of the greater part of the Seal of Statutes-Merchant within the said City, And, &c. Clerk there and Keeper of the lesser part of the Seal of the Statutes-Merchant there appointed, is become bound unto the said *A. B.* in the Sum of, &c. payable on, &c. as in and by the said Statute-Merchant more at large may appear. And whereas the said *C. D.* by Indenture of Release or Conveyance, bearing Date, &c. for the Considerations therein mentioned, Did grant, bargain, sell, alien, release and confirm, unto the said *A. B.* his Heirs and Assigns, All that Messuage, &c. To hold to the said *A. B.* his Heirs and Assigns, to the only proper

per Use and Behoof of him the said *A. B.* his Heirs and Assigns for ever, as in and by the said recited Indenture (Relation being thereunto had) may more at large appear. Now this Indenture witnesseth, That it is covenanted, granted, concluded and agreed by and between the said Parties to these Presents, That if the said *C. D.* his Heirs, Executors, Administrators or Assigns, or any of them, do and shall pay, or cause to be paid, unto the said *A. B.* his Executors, Administrators or Assigns, the Sum of, *£c.* in and upon, *£c.* That then as well the said Statute-Merchant as also the said recited Indenture of Release or Conveyance shall be void and of none effect as to the said *A. B.* his Heirs, Executors, Administrators and Assigns, And that then and from thenceforth the said *A. B.* and his Heirs shall stand and be seized of the said granted Premises, with the Appurtenances, to the Use of the said *C. D.* his Heirs and Assigns, for ever, and to and for none other Use, Intent or Purpose whatsoever: And that in the mean time until Default shall happen to be made in Payment of the said Sum of, *£c.* in manner aforesaid, it shall and may be lawful to and for the said *C. D.* his Heirs and Assigns, to receive and take to his and their own Use and Uses the Rents, Issues and Profits of the said Premises above-mentioned, to be granted to the said *A. B.* But if Default shall be made of or in Payment of the said Sum of, *£c.* at the Days and Times above-mentioned then as well the said Statute-Merchant as also the said recited Indenture of Release or Conveyance, and all the Estate thereby granted to the said *A. B.* his Heirs and Assigns, shall stand, remain and continue To the only Use and Behoof of him the said *A. B.* his Heirs and Assigns,

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signs for ever, in full Force and Effect absolute without any Proviso, Condition or Power of Redemption whatsoever. In Witness, &c.

A Defeazance of a Conveyance of Lands in Fee.

This Indenture made, &c. Between *A. B.* of, &c. of the one part, and *C. D.* of, &c. of the other part. Whereas in and by certain Indentures of Lease and Release bearing Date, &c. made between the said *C. D.* of the one part, and the said *A. B.* of the other part, the said *C. D.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *A. B.* Did grant, bargain, sell, alien, release and confirm unto the said *A. B.* and to his Heirs and Assigns for ever, All that Messuage, &c. And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premisses, and of every Part and Parcel thereof, with the Appurtenances, To hold unto the said *A. B.* his Heirs and Assigns, to the only proper Use and Behoof of the said *A. B.* his Heirs and Assigns, for ever, as in and by the said recited Indenture may more fully and at large appear. Now this Indenture witnesseth, That the said *A. B.* doth hereby, for himself, his Heirs, Executors and Administrators, covenant, grant and agree to and with the said *C. D.* his Heirs and Assigns, That if the said *C. D.* his Heirs or Assigns, do and shall well and truly pay, or cause to be paid, unto the said *A. B.* his Executors, Administrators or Assigns, the full Sum of, &c. in and upon, &c. next coming, and also the further full Sum of, &c. in and upon, &c. which will be in the Year of our Lord, &c. without any Deduction or Abatement for Taxes, Assessments, or any other Impositions whatsoever

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either

either ordinary or extraordinary, That then, and at any time thence after, he the said *A. B.* his Heirs, Executors and Administrators, shall and will at the Request, Costs and Charges, of the said *C. D.* his Heirs or Assigns, Reconvey or otherwise transfer and assure All and singular the said Premises above-mentioned, with the Appurtenances, unto the said *C. D.* his Heirs or Assigns, or to whom he or they shall appoint, so as the Person or Persons who is or are to make such Reconveyance or other Assurance by Force of these Presents be not compelled or compellable for the doing thereof to travel or go from the Place or Places of his or their respective Habitation or Abode at the Time of such Request to be made, nor to enter into any further or more general Covenants than against him and themselves respectively, and his and their respective Acts, any Thing in the said recited Indenture of Release, or herein, contained to the contrary notwithstanding. And the said *C. D.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *A. B.* his Executors, Administrators and Assigns, that he the said *C. D.* his Heirs or Assigns, shall and will well and truly pay, or cause to be paid, unto the said *A. B.* his Executors, Administrators or Assigns, the said full Sum of, *£c.* in and upon the said, *£c.* next coming, and also the further full Sum of, *£c.* in and upon the said, *£c.* which will be in the said Year of our Lord, *£c.* without any Deduction as aforesaid, according to the true Intent and Meaning of these Presents. And, lastly, it is covenanted and agreed upon by and between the said Parties to these Presents, and the true Meaning hereof also is, and it is hereby so declared, That the said *C. D.* his Heirs and

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Assigns, shall and may at all Times, until Default shall be made in Payment of the said Sum of, &c. and, &c. at the Days and Times above limited, peaceably and quietly have, hold and enjoy, All and singular the said Premises above-mentioned, and receive and take the Rents and Profits thereof to his and their own proper Use and Benefit, any thing in the said recited Indenture, or in these Presents contained to the contrary notwithstanding. In Witness, &c.

A Defeazance of a Demise for 500 Years.

This Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part. Whereas by Indenture bearing Date, &c. made between the said *C. D.* of the one Part, and the said *A. B.* of the other Part, He the said *C. D.* for the Considerations therein mentioned, Did demise, grant, bargain and sell unto the said *A. B.* All that Messuage, &c. To hold unto the said *A. B.* his Executors, Administrators and Assigns from the Date of the said Indenture for the Term of 500 Years thence next ensuing, At and under the yearly Rent of one Pepper Corn, if demanded, as in and by the said recited Indenture may more fully appear. Now this Indenture witnesseth, That the said *A. B.* doth hereby for himself, his Executors and Administrators, covenant, grant and agree to and with the said *C. D.* his Heirs and Assigns, that if the said *C. D.* his Heirs or Assigns, do and shall well and truly pay or cause to be paid unto the said *A. B.* his Executors, Administrators or Assigns, the full Sum of, &c. in and upon, &c. without any Deduction or Defalcation for Taxes, &c. that then and at any Time thence-

thenceafter he the said *A. B.* his Executors, &c. shall and will at the Request, Cost and Charges of the said *C. D.* his Heirs or Assigns, Surrender, assign, or otherwise transfer All and singular the said Premises, with the Appurtenances, and all his Estate, Term and Interest therein unto the said *C. D.* his Heirs and Assigns, or to whom he or they shall direct and appoint, so as the Person or Persons who is or are to make such Assignment or other Assurance, be not compell'd To travel, &c. or enter into any further or more general Covenants than against him and themselves respectively, and his and their respective Acts, any thing in the said recited Indenture or in these Presents contained to the contrary notwithstanding. And the said *C. D.* for himself, his Heirs and Assigns, doth covenant and grant to and with the said *A. B.* his Executors, Administrators and Assigns, that he the said *C. D.* his Heirs or Assigns, shall and will well and truly pay or cause to be paid unto the said *A. B.* his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon, &c. without any Deduction as aforesaid, according to the true Intent and Meaning of these Presents. And it is covenanted, granted, concluded and agreed upon by and between the said Parties to these Presents, that until Default shall be made in Payment of the said Sum of, &c. he the said *C. D.* his Heirs and Assigns, shall and may have, hold and enjoy, All and singular the said Premises above-mentioned, with the Appurtenances, and receive and take the Rents, Issues and Profits thereof to his and their own proper Use and Benefit, any thing in the said recited Indenture, or herein contained to the contrary notwithstanding. In Witness, &c.

A Defeazance of an Assignment of Lands for 1000 Years, &c.

This Indenture made, &c. Between *A. B.* of, &c. of the one Part, and *C. D.* of, &c. of the other Part. Whereas in and by one Indenture bearing Date, &c. last past, made between the said *C. D.* of the one Part, and the said *A. B.* of the other Part, He the said *C. D.* for and in Consideration of the Sum of, &c. to him in Hand paid by the said *A. B.* Did grant, bargain, sell, assign, and set over unto the said *A. B.* All that Messuage, &c. To be had and holden unto the said *A. B.* his Executors, Administrators and Assigns, for and during the Term of 1000 Years thence next and immediately ensuing and following, and fully to be compleat and ended, At and under the yearly Rent of a Pepper-Corn, as in and by the said recited Indenture may more fully appear. And whereas the said Assignment above-mentioned to be made to the said *A. B.* by the said *C. D.* was intended only as a Security for the Repayment of the said Sum of, &c. being the Consideration-Money therein mentioned, and the Interest thereof. And whereas the said *A. B.* hath since lent to and paid for the said *C. D.* several other Sums of Money; so that upou Account this Day made up between the said *C. D.* and *A. B.* there remains due and owing to the said *A. B.* the Sum of, &c. Now this Indenture witnesseth, that the said *A. B.* doth hereby for himself, his Executors and Administrators, covenant, grant and agree to and with the said *C. D.* his Heirs and Assigns, that if the said *C. D.* his Heirs or Assigns, do and shall well and truly pay or cause to be paid unto the said

A. B.

A. B. his Executors, Administrators or Assigns, the full Sum of, &c. in and upon, &c. without any Deduction or Defalcation for Taxes, Assessments, or any other Impositions whatsoever, either ordinary or extraordinary, that then, and at any Time thence after he the said *A. B.* his Executors, Administrators and Assigns, shall and will at the Requests, Costs and Charges of the said *C. D.* his Heirs or Assigns, surrender or assign, or otherwise transfer, all and singular the said Premises above-mentioned, with the Appurtenances, unto the said *C. D.* his Heirs and Assigns, or to whom he or they shall appoint, so as the Person or Persons who is or are to make such Assignment, or other Assurance, be not compell'd or compellable for the doing thereof, to travel or go from the Place or Places of his or their Abode, or to enter into any further or more general Covenants than against him and themselves respectively, and his and their respective Acts, any thing herein, and in the said Indenture of Assignment above-recited contained to the contrary notwithstanding. And the said *C. D.* for himself, his Heirs and Assigns, Doth covenant and grant to and with the said *A. B.* his Executors, Administrators and Assigns, that he the said *C. D.* his Heirs or Assigns, shall and will well and truly pay or cause to be paid unto the said *A. B.* his Executors, Administrators or Assigns, the said full Sum of, &c. in and upon, &c. without any Deduction as aforesaid, according to the true Intent and Meaning of these Presents. And also that the said *A. B.* his Executors, Administrators and Assigns, shall and may from Time to Time, and at all Times after Default shall be made in Performance of the Proviso or Condition aforesaid, for and during
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all the Rest and Residue of the said Term of 1000 Years above-recited, which shall be then to come and unexpired, peaceably and quietly enter into, have, hold and enjoy, All and singular the said Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of him the said C. D. his Heirs and Assigns, and of all and every other Person or Persons whatsoever. And further that he the said C. D. and his Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having or claiming in the said Premisses above-mentioned, or any Part thereof, Shall and will at any Time or Times after Default shall be made in Performance of the said Proviso or Condition aforesaid at the Request of the said A. B. his Executors, Administrators or Assigns, make, do, acknowledge, levy, suffer and execute, or cause or procure to be made, done, acknowledged, levied, suffered and executed, All and every such further and other lawful and reasonable Grants, Acts and Assurances in the Law whatsoever, for the further, better and more perfect granting, conveying and assuring of all and singular the said Premisses above-mentioned, with the Appurtenances, unto the said A. B. his Executors, Administrators and Assigns, To hold to him, his Executors, Administrators and Assigns, for and during all the Rest and Residue of the said Term of 1000 Years above-recited, which shall be then to come and unexpired, discharged of and from all Benefit and Equity of Redemption whatsoever, as by the said A. B. his Executors, Administrators and Assigns, or his or their Counsel learned in the Law shall be reasonably devised,

vifed, or advifed and required. And laftly, it is covenanted, granted, concluded and agreed upon by and between the faid Parties to thefe Prefents, and the true Meaning hereof alfo is, and it is hereby fo declared, that until Default fhall be made in Payment of the faid Sum of, &c. and Interest, he the faid C. D. his Heirs and Affigns, fhall and may hold and enjoy all and fingular the faid Premiffes above-mentioned, with the Appurtenances, and receive and take the Rents, Issues and Profits thereof to his and their own proper Ufe and Benefit, any Thing herein contained to the contrary notwithstanding. In Witnefs, &c.

T H E

THE
L A W S
CONCERNING
BANKRUPTCY.
AND
Commissions of BANKRUPTS, &c.

NEXT to the Laws of Securities, it may not be improper to take some Notice of the Laws relating to Bankrupts; as Engagements for Money are productive of Commissions of Bankruptcy; and all Securities make Men Debtors, and none but Debtors can be reckoned amongst Bankrupts.

This Head of Bankrupts being in its Nature large and voluminous, I shall divide it into three Branches.

I. The

The Laws against Bankrupts. 157

1. The Statutes relating to Bankruptcy, Descriptions of Bankrupts, &c.
2. Law-Cases from Time to Time adjudg'd in the Courts at *Westminster* on those Statutes.
3. Precedents of Commissions, with Directions for taking them out, their Execution, &c.

The Statutes concerning Bankrupts (who are generally described to be such Persons as have gotten other Mens Goods into their Hands, and Conceal themselves to deceive their Creditors) are, 3 H. 8. 13 Eliz. 1 21 Jac. 1. 4 & 5 and 10 Ann. 5 Geo.

By 3 H. 8. c. 4. The Lord Chancellor, Treasurer, &c. are to take Order with the Bankrupt's Body, Lands and Goods, for the Payment of his Debts: But this is alter'd by 13 Eliz. c. 7. which is more full to the Purpose: By this Act, if any Person exercising Trade departs the Realm, conceals himself, takes Sanctuary, suffers himself to be arrested, outlawed or imprison'd without just Cause, to the Intent to defraud Creditors, he shall be deemed a Bankrupt; and the Lord Chancellor upon Complaint in Writing against any such Bankrupt, is to appoint honest and discreet Persons to take Order with the Body, wheresoever found, and also with the Lands (as well Copyhold as Freehold) Hereditaments, Annuities, Offices, Writings, Goods, Chattels and Debts, which the Bankrupt hath in his own Right, with his Wife, Child or Children, &c. and to cause the same to be appraised and sold, &c. for the Payment of the Creditors rateably.

The

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The Estate which happens to be the Bankrupt's, by Purchase or Descent, after he becomes a Bankrupt, shall also be extendible by the Commissioners or the major Part of them: But this Act shall not extend to annual Estates of Lands conveyed *bona fide* before he became a Bankrupt. The Commissioners have Power to convene before them any Person accused or suspected to have any of the Bankrupt's, Goods, Chattels or Debts, &c. and for Discovery thereof may examine upon Oath, or otherwise as they think fit: If any Person refuse to disclose &c. he shall forfeit double the Value of the Goods, Chattels or Debts concealed: And if any Person demand or detain any of the Bankrupt's Lands, Goods, Chattels, or Debts (not justly due) he shall forfeit double the Value.

In case any Person Indebted absent from his usual Place of Residence, upon Complaint, the Commissioners, or the major Part of them, are to award five Proclamations to be made upon five Market-Days near the said Place, commanding him to surrender himself; which if he do not within convenient Time, he shall be adjudged out of the Queen's Protection; and those that receive or conceal the Party (knowingly) upon Information to the Commissioners, shall suffer Imprisonment, and be fined.

The Creditor not fully satisfied by this Act may take his Course at Law against the Bankrupt for the Residue of his Debt.

The 1 *fac. c. 15.* enacts, That every Subject born, or Denizen, who using Trade, shall depart the Realm, or from Home, keep House, suffer himself to be arrested for Debt not justly due, to be outlawed, imprison'd, fraudulently procure his Goods to be attached, make any fraudulent

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fraudulent Grant of Lands or Goods, with Intent to deceive his other Creditors; or being arrested, shall lie in Prison six Months or more, shall be adjudged a Bankrupt. And the Bankrupt hereby Described shall be proceeded against as is limited by Stat. 13 *Eliz.*

If a Bankrupt grant his Lands or Goods, or transfer his Debt into other Mens Names, (except to his Children upon Marriage, or upon valuable Consideration) the Commissioners may sell them, and such Sale shall be good. The Commissioners have Power to assign the Bankrupts Debts to the Creditors; and by such Assignment they shall be recoverable by the Creditors. And any Creditor shall be received to take his Part, if he come in within four Months after the Commission sued out, and pay his Part of the Charge; otherwise the Commissioners may proceed to Distribution.

The Commissioners are to proceed to Execution notwithstanding the Death of the Bankrupt. But no Debtor shall be prejudic'd by the Payment of his Debt to a Bankrupt before he have Notice that he is a Bankrupt. And the Commissioners shall account to the Bankrupt, and pay him the Overplus; and the Creditors being all satisfied, the Bankrupt may recover the remaining Debts.

If upon Warning in Writing left three times at the most usual Place where the Bankrupt dwelt within one Year before he became a Bankrupt, he appear not before the Commissioners, they may cause him to be proclaimed at some publick Place; and if upon five such Proclamations he yield not himself, they shall by Warrant cause him to be apprehended and brought before them to be
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examined

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examined concerning his Estate, &c. and if he refuse to be examined, the Commissioners may Commit him until he conforms; or if being examined, he commit Perjury, to the Prejudice of the Creditors, to the Value of 10 l. he shall be indicted for the same, and upon Conviction stand in the Pillory, have one of his Ears nail'd, &c.

Where any Person is known or suspected to detain any of the Bankrupt's Estate, and do not appear, or send some lawful Excuse at the next Meeting after Warning given him; or appearing, if he refuse to be examined upon Oath, the Commissioners by Warrant shall cause him to be Arrested, and if he still refuse, may commit him until he submit.

By the 21 *Jac.* 1. c. 19. all Laws made against Bankrupts are to be beneficially construed for Creditors. All Persons of Trade, and Scriveners, &c. that procure Protection (except of Parliament) and all such as by exhibiting Petitions endeavour to compel their Creditors to take less than their due Debts, or to gain Time for the Payment thereof; or being indebted in 100 l. or more, shall not satisfy the same within six Months after due, (and the Debtor arrested,) or within six Months after the original Writ sued out, &c. or that after Arrest lie six Months in Prison, Escape out of Prison, or procure Enlargement by putting in Common Bail, shall be adjudged Bankrupts, &c. and Commissions and other Proceedings provided by 13 *Eliz.* shall be pursued against them.

The Commissioners may by themselves or others break open the Bankrupt's House, Chests, &c. where his Estate is, or is reputed to be; and then seize and order his Body and Estate. The Bankrupt's Wife shall be examined upon Oath;

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Oath; and if she appear not, or refuse to be examined, she shall incur the Punishment inflicted by former Laws in like Cases. And the Bankrupt that fraudulently conceals his Goods, or renders not some just Reason why he became Bankrupt, shall be set the Pillory, &c.

The Commissioners may proceed when the Bankrupt by Fraud makes himself Accountant to the King. And in the Distribution of the Bankrupt's Estate, another Man's Goods in the Bankrupt's Possession and Disposition, shall be distributed by the Commissioners as the Bankrupt's own Goods: No more Respect shall be had to Debts upon Judgment, Specialties, &c. than to other Debts.

The Commissioners Grant of the Bankrupt's entail'd Lands shall be good, except when the Reversion or Remainder is in the King: And Conditional Estates granted by the Bankrupt may be redeemed by the Commissioners, and afterwards sold as his other Estate. But no Purchaser shall be impeached by this or the former Act, unless the Commission be sued forth within Five Years after the Party becomes a Bankrupt.

Stat. 4 & 5 Ann. c. 17. enacts, That if any Person shall be Bankrupt, and a Commission of Bankrupt shall issue out against him, in 30 Days after Notice thereof in Writing left at his usual Place of Residence, and given in the *Gazette* of the Meeting of the Commissioners, he shall surrender himself, and submit to be examined upon Oath, &c. and if upon such Examination he do not discover how, to whom, and upon what Consideration he has disposed of his Goods and Estate (the Wife and Childrens necessary wearing Apparel excepted) and all Books, Papers, &c. all which are to be delivered up; such

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Bankrupt in case of wilful Omission shall suffer as a Felon without Benefit of Clergy. (And *Town* the Chandler was executed on this Law) But the Lord Chancellor may enlarge the Time for surrendring and discovering not exceeding 60 Days.

The Commissioners, or a major Part of them, have Power to send for such Persons as they are informed or believe can give an Account of any Act of Bankruptcy committed, and examine them on Oath, &c. concerning such Bankrupt's Estate, and if any Person upon Payment, or Tender of reasonable Charges, shall refuse or neglect to appear, or refuse to be sworn or to answer, the Commissioners may commit them to Prison until they submit to be examined; provided no Person be obliged to travel above 20 Miles.

Upon Certificate of the Commissioners, and a Person proved a Bankrupt, the Judges of the Courts at *Westminster*, and Justices of Peace are required to grant Warrants for the Apprehension and Commitment of such Person to the County Gaol; and the Gaoler is forthwith to give Notice to one of the Commissioners of such Person's being in his Custody. whereupon the Commissioners are to send their Warrant for the Delivery of the Bankrupt to the Persons authorized, and convey him to them to be examined, &c. and if such Person apprehended, within 30 Days submit to be examined, and in all Things conforms as if he had surrendered, he shall have the same Benefit as if he had voluntarily surrender'd.

Persons surrendering and conforming themselves, shall be allowed 5 *l.* per Cent. out of the neat Produce of the Estate; (so as the 5 per Cent. do not exceed 200 *l.*) unless the neat Proceed of the Bankrupt's Estate amounts not to 8 *s.* in

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the Pound, above Charges, when the Bankrupt shall not be allowed the 5 *per Cent.* but shall have such Allowance as the Assignees and Commissioners shall think fit. Nothing in this Act shall give any Advantage to a Bankrupt, who upon Marriage of any of his Children hath given above 100 *l.* (unless he prove that at the Time thereof he had sufficient to satisfy his Debts) or who shall have lost in one Day 5 *l.* or 100 *l.* in twelve Months preceeding the Bankruptcy, in Gaming, Betting, Wagers, &c. And no Discovery shall entitle the Bankrupt to the Benefit of this Act, unless the Commissioners certify to the Lord Chancellor that he hath conform'd; which Certificate must be allowed by the Lord Chancellor, or two of the Judges at *Westminster* to whom the same shall be referr'd, &c. and the Creditors may be heard against the Allowance thereof.

Every Person, who within 60 Days after the Time allowed the Bankrupt to surrender himself and conform, shall discover any of the Bankrupt's Estate, shall be allowed 3 *per Cent.* out of the neat Proceed, to be paid by the Assignees. If any one accepting a Trust, and concealing or protecting a Bankrupt's Estate, shall not in 30 Days after a Commission issued, and Notice thereof, discover such Estate to one of the Commissioners, and submit to be examined, he shall forfeit 100 *l.* and double the Value, to the Use of the Creditors; recoverable in the Name of the Assignees.

The Commissioners may adjust the Accounts unbalanc'd between the Bankrupts and others, and take the Balance, &c. Within the 30 Days limited for the Bankrupt's appearing, the Commissioners are to appoint not less than three

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Meetings, the last to be on the 30th Day : And there shall not be allowed any Moneys for Expences in eating and drinking of the Commissioners or other Persons. &c.

The 5 *Ann. c. 22.* ordains, That if any Persons who shall become Bankrupt, (or any others, with their Consent, &c.) shall remove, conceal or imbezil any Moneys or Effects whereof they or any Person in Trust for them are possessed of or entitled to, to the Value of 20 *l.* or any Books of Accounts, Bonds, Bills, Writings, &c. relating thereunto, with Intent to defraud their Creditors, every such Person so becoming Bankrupt shall suffer as a Felon without Benefit of Clergy, and his Estate be divided amongst his Creditors.

Upon a Commission of Bankrupts issuing, the Commissioners are to give Notice thereof in the *Gazette*, and appoint Time and Place for the Creditors to meet, and chuse Assignees (which for Places within the Bills of Mortality shall be at *Guildball*) and the Commissioners shall assign the Estate to such only as shall be chosen by the major Part of the Creditors present; which Assignees must keep Books of the Bankrupt's Estate, with Liberty for the Creditors to inspect them. But the Commissioners for the better securing the Estate, may immediately make Assignees, removable at the Meeting of the Creditors; and these Assignees are to deliver and assign the Estate in their Hands to the Assignees chosen by the Creditors, &c. or neglecting to do it 14 Days after Notice of the Choice of such new Assignees, &c. they shall forfeit 100 *l.* to be divided amongst the Creditors, &c. Such Assignees have Power to compound with Debtors to the Bankrupt upon reasonable Terms.

No

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No Bankrupt shall be discharged from his Debts, or have any Benefit by 4 & 5 Ann. unless the Allowance and Certificate by the said Act directed to be made be signed by four Parts in five in Number and Value of the Creditors: And all Securities given by any Bankrupt, or other Person for him, to the Use of any Creditor, for the securing the Payment of any Money due from such Bankrupt (at the Time of Bankruptcy) between his Bankruptcy and Discharge, to induce such Creditor to sign such Allowance or Certificate, shall be void.

No Commission of Bankrupt shall be issued out upon the Petition of Creditors, unless the single Debt of one Creditor amount to 100 l. or more; or unless the Debt of two Creditors or more petitioning amount to 150 l. or unless the Debt of three or more petitioning amount to 200 l. or more; and the Creditors petitioning are to give Bond in the Penalty of 200 l. for proving their Debts, and the Party a Bankrupt; and if the Debts are not proved due, or the Party not proved a Bankrupt, but the Commission appears to be fraudulently taken out, the Lord Chancellor may assign such Bond to the Party grieved, to recompence him his Damages.

There is a Proviso in this Statute, That no Receiver-General of Taxes, no Farmer, Grazier, &c. shall be entitled to the Benefits given by this Act, or the 4 & 5 Ann. Or be deem'd a Bankrupt.

By 10 Ann. c. 15. (which recites that great Mischiefs have happen'd to Trade and Credit by reason of the Descriptions of Bankrupts in the Act 21 Jac. 1. c. 19, &c.) it is enacted, That all the Statutes so far as they relate to the Description of a Bankrupt shall be void; and that no

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Person

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Person under any of the said Descriptions shall by reason of the same be adjudg'd to be within the Statutes of Bankrupts.

The Discharge of a Bankrupt by Virtue of the Act 4 Ann. or by any other Act relating to Bankrupts, from the Debts by him owing at the Time he became a Bankrupt, shall not be intended to discharge or release any other Person, who was Partner in Trade with the Bankrupt, &c. or who stood jointly bound, with him for the same Debt from which he was discharged.

By other Statutes, no Member of any Society or Company erected by Act of Parliament shall be adjudg'd a Bankrupt in respect of his or their Stock, &c.

The 5 Geo. c. 24. is the most particular Law that has ever been made relating to Bankrupts; for which Reason, and for that it is the last general Law under this Head, I shall set forth the same more fully than I have done any other.

By this Statute, If any Person who shall become Bankrupt (and against whom a Commission of Bankrupt shall issue, whereon such Person shall be declared a Bankrupt) shall not within 30 Days after Notice in Writing left at his Place of Abode, and Notice in the *London Gazette*, that such Commission hath issued, and of the Time and Place of Meeting of the Commissioners, surrender himself to them, and submit to be examined upon Oath, or being a *Quaker*, upon Affirmation, and conform himself to the several Statutes concerning Bankrupts; and on such Examination discover how, to whom, and upon what Consideration he hath disposed of his Estate and Goods, Papers, &c. of which he was possessed, or that any Person had in Trust

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for him at the issuing of the Commission; and deliver up to the Commissioners all such his Goods, Estate, Books, &c. (except his and his Wife's and Childrens necessary Apparel) such Bankrupt for any wilful Omission, being thereof convicted, shall be adjudged a Felon. The Lord Chancellor may enlarge the Time, not exceeding 60 Days, (to be computed from the End of the 30 Days) so as the Order be made five Days at least before the Time on which such Person was to surrender himself, &c. And the Person of a Bankrupt shall not be liable to any Arrest in going to the Commissioners, &c. if he attend in Obedience to any Notice or Summons from them: Officers arresting and detaining him shall forfeit *5 l. per Diem*.

If any Persons who shall become Bankrupts, or any other by or with their Order, Consent or Privy, shall remove, conceal, destroy or imbezil any Goods, Money or Effects, whereof they or any Persons in Trust for them were possessed or entitled to, at, after or during the Time of their becoming or continuing Bankrupt, to the Value of 20 l. or any Books of Accounts, Bonds, Bills, or other Writings relating thereunto, with Intent to defraud their Creditors, every such Bankrupt thereof lawfully convicted, shall be adjudged to be and suffer as a Felon; and his Estate divided amongst the Creditors seeking Relief under the Commission.

Upon Certificate under the Hands and Seals of the Commissioners that a Commission is issued forth, and the Person proved a Bankrupt, the Judges of the Courts at *Westminster*, and all Justices of Peace, are required to grant Warrants for apprehending the Bankrupt, (not surrendring) and to commit him to the County Gaol,

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there to remain till remov'd by Order of the Commissioners, or the major Part of them: And the Gaoler is required to receive such Person into his Custody, and give Notice of it to one of the Commissioners; and the Commissioners are to send their Warrant forthwith for the delivering up such Bankrupt to the Persons authorized, in order to Examination; and the Commissioners are to seize the Goods and Effects of such Bankrupt, and his Papers, Writings, &c. But if such Person so apprehended shall within the Time limited submit to be examined, &c. he shall have the same Benefit as a Person that voluntarily surrenders.

The Commissioners are authorized to send for such Persons as can give Information of any Acts of Bankruptcy committed by any Person against whom a Commission shall be issued, and examine them upon Oath or otherwise touching the same, in such Manner as they are obliged as to the Bankrupt's Estate: And if any Person shall refuse to appear (upon Payment or Tender of reasonable Charges) or appearing, shall refuse to be sworn; or appearing, shall refuse to answer, &c. the Commissioners by Warrant under their Hands and Seals may commit such Offenders to Prison, there to remain without Bail or Mainprize, till they submit to answer. (But no Person is obliged to travel above 20 Miles to be so examined) And the Gaoler is required to keep such Persons so committed; and all Bankrupts committed by the Commissioners, Judges, &c. in close Custody, within the Walls of the Prison, till they shall conform, or be discharged by the Lord Chancellor, &c. And if such Person be removed by *Habeas Corpus*, the Gaoler where he shall be committed shall confine

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fine him within the Walls of the Prison till discharged, under the Penalty of 500 *l.* (for the Use of the Creditors) if the Gaoler permit him to go without the Walls, or to Escape, &c. And on the Request of a Creditor, who has prov'd his Debt, the Gaoler also shall shew the Person committed, or forfeit 100 *l.* and for every other like Offence 200 *l.* recoverable by Action of Debt in the Courts at *Westminster*.

Every Person who shall have accepted of any Trust, or shall conceal any Estate of any Bankrupt from his Creditors, and do not within 30 Days after the Commission issued, and Notice thereof, discover such Trust and Estate to the Commissioners, and submit to be examined, shall forfeit 100 *l.* and double the Value of the Estate concealed for the Use of the Creditor, &c.

Any Person who shall voluntarily come in and discover any of the Bankrupt's Estate, within 60 Days after the Time allowed to the Bankrupt to surrender himself, &c. shall be allowed 3 *per Cent.* And Bankrupts surrendring and conforming themselves, as by this Act is directed, shall be allowed 5 *per Cent.* out of the neat Produce of the Estate that shall be recovered, so as the same amount not to above 200 *l.* which shall be discharged from all Debts owing at the Time of the Bankruptcy: But if the neat Proceed of such Bankrupt's Estate shall not amount to 8 *s.* in the Pound clear of all Charges, he shall be allowed only so much as the Assignees and Commissioners shall think fit, not exceeding 3 *per Cent.* And no Bankrupt shall have any Privilege from this Act, who hath given above 200 *l.* in Marriage with any of his Children, unless he can prove that at the Time thereof, over and above the Money so given, he had sufficient to pay his

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his Debts ; or who shall have lost in one Day at Gaming, Betting, &c. 5 l. or 100 l. in a Year before, &c.

No Discovery on Oath made by any Bankrupt shall entitle him to the Benefit of this Act, unless the Commissioners certify to the Lord Chancellor that he hath made a full Discovery of all his Estate, &c. and that there is no Reason to doubt the Truth of such Discovery, and unless four Parts in five in Number and Value of the Creditors sign the Certificate, and testify their Consent to the Allowance of it, and to the Bankrupt's Discharge, which is to be also certified by the Commissioners ; and unless the Bankrupt make Oath that such Certificate and Consent were obtained fairly, and without Fraud ; and unless the Certificate, after such Oath, be allowed by the Lord Chancellor, or by two of the Judges at *Westminster*, to whom the Consideration of the Certificate shall be referred by the Lord Chancellor : And any of the Creditors may be heard, if they think fit, against the making of such Certificate, and against the Confirmation thereof. And all Bonds, Bills, &c. given by any Bankrupt to the Use of any Creditor, for securing the Payment of any Debt, &c. as a Consideration for such Creditors signing the Certificate, shall be void, &c.

After the Bankrupt shall have obtained a Certificate, and the same is duly confirmed, on 14 Days Notice given or left at his Place of Residence by the Assignees, or their Order, he shall attend them, to settle any Accounts between him and any Debtor or Creditor of his Estate, (which Accounts the Commissioners, &c. may Balance) or attend any Court of Record to be examined touching the same ; or for such other Business

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Business as the Assignees shall judge necessary for getting in the Bankrupt's Effects, for the Benefit of the Creditors; for which Attendance the Bankrupt shall be allowed 2 s. 6 d. per Day: And if he refuse to attend, &c. the Commissioners by Warrant may apprehend him, and commit him to the County-Gaol, there to remain in close Custody till he conforms.

When any Commission shall hereafter issue, the Commissioners, or a major Part of them, after they have declared the Person a Bankrupt, are to cause Notice thereof to be given in the *London Gazette*, and appoint a Time and Place for the Creditors to meet, in order to chuse Assignees of the Bankrupt's Estate; and *Guildhall* is the Place appointed for *London*, and within the Bills of Mortality. At these Meetings the Commissioners are to admit the Proof of any Creditor's Debt, who lives remote, by Affidavit; and permit any Person authorized by Letters of Attorney from any Creditor, to vote in the Choice of an Assignee; but no Creditor or other Person for him, shall vote in the Choice of Assignees whose Debt amounts not to 10 l. and who do not prove the Debt, and pay Contribution-Money. And the Assignees are to keep Books of Account, in which they shall enter all Sums of Money, and other Effects of the Bankrupt's, &c.

The Commissioners also may immediately appoint Assignees for the better securing the Bankrupt's Estate, who may be removed at the Meeting of the Creditors, if the major Part of them whose respective Debts amount to 10 l. or upwards, think fit: And if the Creditors think fit to remove them, the Assignees so removed shall deliver up and assign all the Effects of the Bankrupt that shall come to their Hands, to the

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the Assignees so chosen by the Creditors ; which shall be legally vested in them : And if any of the first Assignees by the Space of 14 Days after Notice of the Choice of such new Assignees, and of their Consent to accept such Assignment, refuse or neglect to make such Assignment and Delivery, every such first Assignee so refusing shall forfeit 200 l. recoverable in the Courts at *Westminster* for the Use of the Creditors.

After an Assignment made pursuant to the Choice of the Creditors, a new one may be appointed by Order of the Lord Chancellor, upon the Petition of any of the Creditors ; and if a new Assignment be ordered to be made, the Debts and Effects of the Bankrupt shall thereby be legally vested in such new Assignees, and they may sue for the same, &c. And the Commissioners are to cause publick Notice to be given in the two *London Gazettes* that immediately follow, of such Removal and new Appointment of Assignees. The Assignees may make Compositions with the Bankrupt's Debtors, &c.

If any Bankrupt, after Commission issued against him, shall pay to the Persons who sued out the same, any Money, or deliver any Goods, &c. whereby such Person shall privately have more in the Pound than the other Creditors, such Payment, &c. is to be deemed such an Act of Bankruptcy, whereby such Commission shall be superseded ; and the Lord Chancellor may award another Commission to any Creditors petitioning, whereupon the Person so accepting such Money or Goods, &c. shall pay back and deliver the same, or the full Value thereof, to such Persons as the new Commissioners shall appoint, in Trust for the other of the Bankrupt's Creditors.

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Upon the Petition of any Person (claiming any Estate under any Commission) the Lord Chancellor may order the Commission, the Depositions proving the Bankruptcy, the Proceedings, Certificates, &c. to be entered of Record; and a Copy of the Record may be given in Evidence, in case of the Death of Witnesses, Loss of the Commission, &c. and shall be a full Bar and Discharge of any Action, unless any Certificate, &c. be fraudulently obtained. The Lord Chancellor is to appoint a Place near the Inns of Court, where the Commissions, Depositions, Proceedings, &c. are to be entered of Record, (where all Persons shall be at Liberty to search, &c.) and appoint Persons to enter them, Fees, &c.

No Commission of Bankrupt shall be granted on the Petition of Creditors, unless the Debt of one Creditor petitioning amount to 100 *l.* the Debt of two Creditors to 150 *l.* and the Debt of three or more Creditors to 200 *l.* or upwards; and the Creditors are to give Bond to the Lord Chancellor, as a Security for proving their Debts, (as well before the Commissioners as on a Trial at Law) and the Party a Bankrupt; and if such Debt shall not appear to be due, or the Party shall not be proved a Bankrupt, but that such Commission was taken out fraudulently or maliciously, then the Lord Chancellor being petitioned by the Party grieved, may order Satisfaction to be made him for the Damages sustained; and for the better Recovery thereof, if there be Occasion, assign such Bond to the Party petitioning, who may sue the same in his own Name.

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Commissioners are not capable of acting until they have taken an Oath, *faithfully, impartially and honestly*, according to the best of their Knowledge, to execute the several Powers and Trusts reposed in them as Commissioners; and that without Fav^{ur}, Affection, Prejudice or Malice; which Oath any two or more Commissioners may administer to the others, &c. The Commissioners are to appoint three Meetings, within the 30 Days appointed for the Bankrupt's surrendring, &c. And there shall not be paid by the Creditors, or out of the Bankrupt's Estate, any Moneys for Expences in eating and drinking of the Commissioners, &c. at their Meetings: and if any Commissioner shall order such Expende to be made; or take above 20 s. each for each Meeting, 20 s. for executing a Deed of Assignment, or 10 s. each for executing a Warrant of Contribution or Seizure, every Commissioner so offending shall be disabled to act as a Commissioner in any Commission of Bankrupt.

No Farmer, Grazier, or Drover of Cattle, nor any Receiver-General of Taxes, shall be entitled as such, to any of the Benefits given by this Act; or be deemed a Bankrupt within the same, or any other Statute: But Bankers, Brokers, and Factors, shall be subject to this and the other Acts concerning Bankrupts.

This Act shall be deemed a Publick Act; and continue in Force seven Years, and from thence to the End of the next Session of Parliament.

By Stat. 7 Geo. c. 31. it is enacted, That Persons who give Credit on Securities for their Money, for Payment at a Day that is future, as at the End of three, four, or six Months, &c. to any Person who shall become Bankrupt, such Creditors

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tors shall be admitted to prove their Bills, Notes, or other Securities, in like Manner as if they were made payable presently; and shall be entitled to a proportionable Dividend of the Bankrupt's Estate with other Creditors, deducting a Discount after the Rate of 5 per Cent. for the Time wherein such Debts would have become due by the respective Securities.

And every Bankrupt shall be discharged from every such Bill, Note, &c. and have the Benefit of the several Acts concerning Bankrupts, as if such Money had been due before the Commencement of the Bankruptcy. But no Creditor has Power in respect of such Debt only, to join in a Petition for the suing forth a Commission of Bankruptcy, till the Debt is actually due.

LAW-CASES relating to BANKRUPTS *adjudg'd on the preceding Statutes, &c.*

HE that is a Bankrupt, ought to get his *Living by Buying and Selling*, or the chiefest Part thereof; except in some special Cases; and it must be a general Trade, not particular Employments; for such as live on their manual Labour only, as Husbandmen, Labourers, bare Handicraftsmen, &c. are not Traders within the Statutes. *Cro. Car. 31.*

It is not buying and selling of Land, but of personal Things, that makes a Man a Bankrupt; and one single Act, tho' it let a Man into a general

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neral Dealing, will not make one a Bankrupt. *March Rep.* 37.

Such as buy Wares and convert them into saleable Commodities, by which they get their Livelihood; a Shoemaker that buys Leather, and sells it in Shoes; a Clothier, that buys Wool, and makes it into Cloth; a Salesman, &c. may be a Bankrupt: But a Taylor that makes Cloths only, as a Servant to his Customers, shall not be a Bankrupt. *Cro. Car.* 31, &c.

A Carpenter in *London* hath been adjudged a Bankrupt; a Locksmith, &c. may be a Bankrupt; and so may a Brewer, Vintner, &c. But a Farmer who buys in Cattle, and spends some, and sells others, is not a Bankrupt; tho' a Cow-keeper at *Issington* was adjudged a Bankrupt. *March Rep.* 35.

These and some others, have been adjudged on former Statutes: And any Trading, tho' the Trade be never so inferior in itself, yet if a Person gets his Living by Buying and Selling, and deal considerably in it, he may be a Bankrupt: But a Man is not a Trader, within the Statutes, who hath left off his Trade, and sells the Goods lying upon his Hands, for Debts contracted afterwards, not during the Trade. 1 *Vent.* 29. *Sir Robert Cotton* against *Daintry*. 2 *Keb.* 453.

A Man may become a Bankrupt for Debts due before he gave over Trading; and Discontinuance of Merchandize is not an Exemption from the Statute, when Creditors have taken new Securities; therefore it has been resolved, that it is not necessary a Man should continue his Trade by Buying and Selling to the Time that he becomes a Bankrupt; it is sufficient that he hath used his Trade, and during that Time that he became indebted, and for that Debt he

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is now become a Bankrupt. As if a Merchant leave off his Trade, and go into the Country for two Years, and after he absents himself from his Creditors, by reason of the Debts he owed when he was a Merchant. *Palm. Rep. 325.*

A Feme-Covert Merchant may be a Bankrupt, and so may her Husband; for it shall be accounted his Folly to suffer his Wife to trade as such. *Stone 7.*

By a special Provision in 14 Car. 2. Noblemen and Gentlemen not bred up in Trade, that put Stocks into the *East-India Company, &c.* shall not be Bankrupts. But Persons Trading or Trafficking in any other Way or Manner shall be liable to Commissions of Bankrupts.

A Bankrupt should be a Subject born, or Denizen, and not an Alien; but if a Man were an Alien, and his Wife a Subject; or the Wife an Alien, and the Husband a Subject, as to Goods they are both within the Statute; but the Lands of the Alien shall go to the King. *Good. Bank. 41.*

A Man born in *England* goes over into *Ireland* to live, and there Trades, and frequently buys Goods in *England*, and sells them in *Ireland*; and being indebted becomes Bankrupt in *England*; adjudged that he was a Bankrupt in *England*. *Raym. 375.* And by the Proviso in 21 Jac. 1. that Act and all other Acts made against Bankrupts, are to extend to Aliens, and they shall be subject to the Laws as Bankrupts, &c.

As to departing the Realm, Absenting from Home, or keeping within Doors (by ancient Statutes) the withdrawing or absenting, &c. must be on Purpose to defraud Creditors, so that if a Merchant go beyond Sea with the Knowledge of his Creditors, and they are pleased therewith, &c. he is not within the Statute.

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The Departing from a Dwelling-house need not be a total Departure; for if one have a House, and absents for Fear of Arrest for a Time, and then returns, yet he is a Bankrupt: And suppose a Man hath no Dwelling-house, but lives sometimes at one Place, and sometimes at another; if he appear not at his usual Times or Places of Trade as formerly, nor can be found as formerly, this is said to be within the Words of the Statute 13 *Eliz.* But by some Opinions, if a Man sometimes absents himself, and at other times when he thinks himself safe from Arrests, appears publickly upon the *Exchange*, &c. this seems to be a purging of the Absence before. 3 *Cro.* 13.

If a Man sometimes goes at large, he may be met with one Time or other, which will excuse him; but if his keeping in be to delay and hinder Creditors, it has been adjudged otherwise: The keeping within, unless to defraud and delay Creditors, makes him not a Bankrupt; but if he conceal himself for Debt, for which he is sued, and to delay and defraud his Creditors, tho' but for an Hour, this has been esteemed a sufficient Cause of Bankruptcy. *Palm. Rep.* 325. *Cro. Eliz.* 13.

If a Debtor calls his Creditors together, and they grant him License for a longer Time, this Act makes him not a Bankrupt, because it is not Fraud, nor Intention to defraud. If a Trader finding himself sink in his Estate, executes a Conveyance of all his Lands and Goods to Trustees for the Payment of his real Debts, and then absents; this Conveyance, tho' it be honestly intended, shall not excuse him, for his very absconding makes him a Bankrupt: But if he abscond not, but declares his Intention to pay

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pay his Debts, and the Trustees act accordingly, this Conveyance without other Act shall not make him a Bankrupt, by reason here is no Fraud. *Good. 37.*

If a Man makes a voluntary Settlement of Lands, and be indebted at that Time, (or becomes a Bankrupt in six Months, &c.) he will be an Offender within the Statute 13 *Eliz.* But by *Hutton*, Every Deed made to defraud other Creditors, but those to whom it is made, is not sufficient to make one a Bankrupt; yet if he make any Deed after he begins to be a Bankrupt, this will not be binding by 1 *Fac.* which declares a Man a Bankrupt that makes a fraudulent Deed; if it be not made long before he becomes a Bankrupt, &c. *Hutt. 42, 43.*

A Man may settle Lands on his Son before he be a Bankrupt, and if it be not by Fraud and to deceive Creditors, it shall be good; and the Fraud must be found by Jury. *Jones 438.* If a Man purchase Lands after his being indebted, in the Name of his Wife or Children fraudulently, this will be liable to the Bankruptcy. *March Rep. 34.*

In case of Bankruptcy, the Commissioners have Authority to adjudge a Man a Bankrupt: But the Clause in 21 *Fac. 1. &c.* relating to a Man's endeavouring to compel Creditors to take less than their Due; being indebted 100 *l.* and not paying the same within six Months after arrested; or lying six Months in Prison, escaping, &c. is repeal'd by Stat. 10 *Ann.* which makes void all *Descriptions* of a Bankrupt.

In general there is no Time limited for taking out the Commission of Bankrupt; tho' there is no doubt but the sooner it is done, the better. By 21 *Fac. 1.* it is provided that no Purchaser for

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good and valuable Consideration shall be impeached by Virtue of any of the Statutes of Bankrupt, unless the Commission be sued out within five Years after he shall become Bankrupt; so that in this Case the Commission must be sued out in five Years. 1 *Keb.* 11.

In *Hillary Term*, 1657 in *C. B.* a Commission was sued out within five Years after a Man became Bankrupt; and it was said, he had become a Bankrupt again. And *Hale* made this Difference, that if a Man becomes a Bankrupt by a transient Act, as *Suit*, &c. he may again be a Bankrupt; but if by a continued Act, as withdrawing himself, &c. he may not become a Bankrupt again: And 'tis by this Difference, that a Man is said to be once a Bankrupt and always a Bankrupt. *Jollyfer* against *Horn*.

Tho' the Commissioners have Power to declare a Man a Bankrupt, yet in case of any Doubt (for their own Security) they are cautious in declaring the Bankruptcy from a certain Time, but leave it to a Trial at Law; and the Jury must find whether he were a Bankrupt or not; this is not to be decided barely by the Adjudication of the Commissioners, which may be taken as an Inquest of Office, and not final. *Good.* 44.

If one trust a Bankrupt after he becomes a Bankrupt, knowing him to be so, he shall not be *relievable* by the Commission as a Creditor. And a Plaintiff that hath the Defendant's Body in Execution, shall not come in to be relieved: But if a Plaintiff recover Damages in an Action against the Defendant, and hath Judgment, and the Defendant becomes a Bankrupt, in this Case the Plaintiff is a Creditor, for it is a Debt due to him, and an Action of Debt lies upon the Judgment. *Jones Rep.* 215. 1 *Cro.* 166. A

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A Surety may come in as Creditor ; as may also a Bail, if he pay the Money. If an Executor becomes Bankrupt, a Legatee shall be relieved as a Creditor : A Conusee of a Judgment, Statute, &c. is a Creditor, and coming in and contributing to the Commission, shall be relieved : But a Mortgagee is not a Creditor within the Statute ; he need not come in, for he is provided for by the Statute : In Case of Goods pledged, it is the same. *Stone* 181, 182, &c.

The Bankrupt cannot prefer one Creditor before another ; (but it is said, the King shall be preferred before a private Person, by 21 *Jac.* 1. tho' some Writers tell us the contrary) *Hill.* 3 *Ca.* 1. If certain Creditors sue a Commission, and others within the four Months or more, being Creditors, come before Distribution is made of the Bankrupt's Estate, and will join in the Charge of the Commission, and all that belongs to it, and tender their Parts, they shall not be refused, but have their equal Parts as Creditors : But if any Distribution be made of any Part of the Estate, no Creditors are to be admitted after, that come not in before. *Hob.* 287.

Creditors may come at any Time before Distribution ; and the Court of Chancery has sometimes allowed Creditors to come in after Distribution, upon particular Circumstances which have happen'd ; as in case of Surprize of Creditors, &c. And the Lord Chancellor may order the Execution of the Commission to be suspended, as in *Forth's Case* it was ordered to be forboren for a Month. *Chan. Rep.* 307. Distribution must be to every one of the Creditors a Portion, Rate and Rate alike, according to the Quantity of his or their Debt. 2 *Rep.* 25.

A Merchant's Factor refuses to come in as Creditor, but claims Goods given to him by the

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Bankrupt in Satisfaction of his Debt, since he became a Bankrupt; adjudged he shall not have any Benefit from the Distribution.

The Commissioners have Power to *Sell or Dispose of the Bankrupt's Personal Estate*, which he was possessed of at the Time of his becoming a Bankrupt; and also all such Goods and Chattels which the Bankrupt shall purchase, or which shall come and accrue to him after he became a Bankrupt. The Goods of a Bankrupt are liable to the Sale of the Commissioners notwithstanding the Bankrupt had sold them in Market-Overt. *Siderf. 272.* And if a Bankrupt commits Felony, the Lands shall not escheat, in case of a Common Lord, but the Commissioners may sell it. *Stone 175.*

A Man becomes a Bankrupt after an Extent, and before a *Liberate*, and the Commissioners sell these Goods to Creditors. *Per Cur'*, They cannot be sold. *Cro. Car. 149.* The Extent binds the Goods; so that when the *Liberate* comes, it divests the Property of the Goods out of the Conusor, as to any mean Action or Incumbrance from the Time of the Extent. Execution was sued out by *Fieri Facias*, the Money levied, and in the Sheriff's Hands, and the Man became a Bankrupt. *Per Cur.* The Money recovered in the Sheriff's Hands, was not assignable by the Commissioners to the Creditors; for it was *in Custodia Legis*, &c. *Cro. Car. 166, 176.*

But the Assignees of the Commissioners may bring a *Scire Facias* against the Defendant, in case the Money be in his Hands, in order to try the Bankruptcy; and so gain the Money recovered. *1 Ventr. 193.*

A Man brought an Action of Debt on a Bond, and had a Verdict, and before the Day

in

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in Bank became a Bankrupt; it was moved that the Debt was assigned over, and pray'd to have the Money brought into the Court; but the Court refused, and adjudg'd that Judgment could not be stay'd, the Assignee of the Bankrupt being a Stranger. 1 *Mod. Rep.* 93.

Before the Statute 21 *Fac.* 1. If Goods were attached by foreign Attachment in *London*, and before Recovery the Defendant becomes a Bankrupt, and after Recovery is had, this would avoid the Sale by the Commissioners; but to remedy this, the Proviso in that Statute requires that the Goods shall be in the Possession of the Vendee as the Goods of the Bankrupt, unless they were seized by the Sheriff, before the Party became a Bankrupt; and tho' the Goods were seized before the *Teste* of the Commission, yet they are bound by the Bankruptcy. 3 *Keb.* 480.

The Assignee may bring *Trover*, &c. against those that detain the Goods of the Bankrupt. And tho' the Bankrupt (before he becomes Bankrupt) convey his Goods to other Men upon good Consideration, yet if the same are in his Possession, and he disposes of them as his own, such Goods shall be sold by the Commissioners; for they shall be accounted the Goods of the Bankrupt and not of the Owner. *Style Reg.* 48.

If one be bound in a Bond to *A. B.* and he before the Bankruptcy assigns the Bond, this will be liable to the after Bankruptcy of *A. B.* being only suable in his Name. 2 *Keb.* 331. If a Bond be taken in the Name of another, to the Use of the Bankrupt, the Commissioners may assign it. *Noy* 142. If an Obligation before Day of Payment be assigned by Commissioners of Bankrupt to a Creditor, altho' the Obligation after be-

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comes forfeited, the Bankrupt shall never after take Advantage by this. *Siderf.* 327.

The Commissioners may assign Debts in Trust. *Noy* 142. And they may assign a Judgment. &c. But Payment by a Debtor of a Bankrupt to himself or to his Creditor before Notice of the Bankruptcy, and before the Commission sued out, is a Discharge against the Commissioners or their Assigns. Payment to a Bankrupt after Notice is not good; but if there is no Notice, or if the Party be compelled to pay the same before any Commission sued out, 'tis a good Discharge. 3 *Keb.* 190. 616.

Commissioners may assign Money to one, and Corn, &c. to another of the Creditors. 2 *Bulst.* 26. They may not make an Assignment to many Creditors together for their Debts; it ought to be severally to every one a Part, or it will not be good. *Godb.* 195. But the Practice is to make an Assignment to one or more Creditors, in Trust for themselves, and the other Creditors.

A Lord of a Manor is a Bankrupt, his Tenant dies, the Commissioners may sell the Debt due for the Relief; and so of an Heriot. *Stone* 146. A Penalty of 10 *l.* is laid upon a Person for not reforming a publick Nuisance, which is presented at the next Court; the Lord becomes a Bankrupt, and the Commissioners sell all the Debts of the Bankrupt to A. B. he shall have Action of Debt for this Amerciament. *Stone* 149.

A Bankrupt hath an Advowson, and the Church becomes void, the Commissioners sell the Advowson, the Vendee Presents; the Sale is good, but the Presentation it is said is not. *Good.* 146. A Lease for Years is made with a Proviso or Condition that the Lessee shall not alien; and the Commissioners sell this Term, this will

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will be no Forfeiture; for the Act which impowers the Commissioners to sell to pay Debts, shall not be controlled by such a Proviso. *Stone* 178.

In a Lease for Years, the Lessor covenants with the Lessee and his Assigns to renew; the Lessee becomes Bankrupt, the Commissioners assign this Covenant; whereupon the Assignee brought his Bill to have the Defendant the Lessor renew the Lease to him; but the Bill was dismiss'd. *Chanc. Rep.* 71.

A Man has Common of Cow-pasture to him and his Wife, and their Heirs, &c. the Husband grants the Common to *A. B.* in Fee, the Wife dies without Issue, *A. B.* is a Bankrupt; this is neither Land, Tenement, nor Hereditament, which may be sold by the Commissioners. *Stone* 123.

Commissioners of Bankrupts have a Power to sell, grant and assign, but they cannot bring an Action; their Assignees must bring all Actions. *1 Mod. Rep.* 30. But by *Twysden*, Commissioners of Bankrupts might have an Action of Trover, if they did actually seize any Goods of the Bankrupt. *2 Keb.* 584.

There is a Right in the Creditors by the Act of Bankruptcy, and thereby the Goods are bound, tho' the Creditors have no Action till Assignment. *Siderf.* 271. If a Bankrupt have convey'd away his Goods upon Redemption, the Commissioners may assign some Person to tender or pay the Money at the Day; and after such Tender or Payment may sell the same. And Commissioners may assign an Equity of Redemption. *Good.* 145.

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A Merchant makes a Feoffment in Fee, upon Condition that on Payment of Money he shall re-enter, &c. He becomes a Bankrupt, the Commissioners may tender the Money at a Day, and sell the Land. *Stone* 12.

A Feoffment is made to a Man and his Heirs, provided that if the Feoffor do not pay such a Sum of Money such a Day, then for a further Sum the Feoffee is to have an Estate absolute. The Feoffee becomes Bankrupt, and the Money is not paid at the Day by the Feoffor; the Commissioners have not Power by this Act to force the Feoffor to make an absolute Fee, but Chancery will compel him. *Billingshurst* 116.

A Man makes a Lease rendring Rent, with a Clause of Re-entry, and then he is a Bankrupt, and absconds, &c. If the Rent be unpaid, the Assignees of the Commissioners (if the Words in the Lease are, *That it shall be lawful for the Lessor, his Heirs or Assigns to re-enter*) shall have the Benefit of this Clause of Re-entry; for tho' the Assignees of the Commissioners are not Assigns in Fact to the Bankrupt, yet they are so in Law; and especially by the Equity of the Statute. *Good.* 111.

If two are jointly seized of Lands, and one becomes Bankrupt, his Moiety may be sold by the Commissioners, tho' he be dead; and Survivorship shall not take Place. Two Women Jointenants of a Lease for Years; one takes Husband, who becomes a Bankrupt; the Commissioners may dispose of the Interest of a Moiety. A Bankrupt hath Land in the Right of his Wife, it may be sold during the Coverture; and if she be a Feme-Sole Merchant, she becoming Bankrupt, the whole shall be sold. But the Dower of a Woman shall not be sold, unless she

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the marry one that is actually a Bankrupt. *Stone* 163, 164.

Where there are two Partners, and one breaks, you shall not charge the other with the whole; but the Estate belonging to the joint Trade, as also the Debts due for the same ought to be divided, &c. But if there are two Partners, and one of them die, the Survivor shall be charged for the whole. *Mod. Rep.* 45. An Action well lies by the Assignee of one Partner a Bankrupt, against the other. *2 Keb.* 750.

If a Bankrupt grant his Lands or Goods in the Names of other Persons, &c. the Commissioners notwithstanding may make Sale of them. If one bargain and sell his Land, and before Inrollment becomes a Bankrupt, this Land may not be sold by the Commissioners; but if he makes a Feoffment and Letter of Attorney to give Livery, and then is a Bankrupt before the Seisin delivered, these Lands in such Case may be sold. The Reason of the Difference is, in the first Case the Bargainee is in by the Bargain and Sale, by Relation from the Execution thereof, and not the Inrollment; and the Bankrupt could not by his own Act defeat this; but no Estate in the other Case passeth till the Livery is executed: And the Letter of Attorney is revocable, and his becoming a Bankrupt before the Estate executed, is a Countermand or Revocation in Law. *B. R.* 4 *Car.* 1.

A Judicial Office, or Office of Trust, which cannot be executed by a Deputy, is granted for Life, and the King grants the Reversion to another for Life; he who hath the Grant of the Reversion becomes Bankrupt, and then the Office falls: The Commissioners cannot execute the Office, or put in a Deputy, &c. and if the
Officer

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Officer absents, he forfeits his Office ; whereupon the King grants it over, so that this is no Relief to the Creditors. Wherefore the Statute hath been adjudged not to mean Offices of Trust annexed to the Party ; but other Offices of Inheritance, as Warden of the *Fleet*, Keeper of a Forest, &c. *Stone* 147, 148.

If Land is devised to a Bankrupt, the Commissioners have Power to sell, and the Bankrupt has it not in his Power to wave the Devise. In Assignment of Debt by Commissioners, there is nothing but a naked Thing in Action transferr'd, and no Estate or Reversion to which it may be annexed ; and therefore it is necessary that Privy of Contract should be transferred, otherwise it is said nothing shall be transferred : But if a Man seized in Fee makes a Lease for Years, reserving Rent, and after he becomes a Bankrupt, and the Commissioners assign over the Reversion and the Rent ; in this Case the Assignee shall have an Action of Debt upon the Privy of the Estate, and not of the Contract. 1 *Saund.* 240.

Any Debt certain is assignable ; and Assignees shall have the same Remedy as the Bankrupt himself might have had. 1 *Keb.* 167. *Indebitatus* by the Plaintiff being a Bankrupt, the Defendant pray'd to be discharged on Common Bail, in regard the Debts were assigned, and so the Assignee must bring the Action ; the Court discharged him upon reasonable Bail (*viz.* 100 *l.* when the Debt was 1500 *l.*) 2 *Keb.* 372.

In *Action of Debt* upon an Obligation assigned by the Commissioners, the Assignee did not shew the Obligation, wherefore it was demurred. *Per Cur.* It is good enough, without shewing it in Court ; because he comes in by Act in Law,
and

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and hath no Means to obtain the Obligation.
Cro. Car. 209.

Action on the Case, *Indebitatus Assumpsit* to pay a Debt assigned by the Commissioners of Bankrupt, the Defendant pleaded the Statute of Limitations, and that *Causa actionis non accrevit infra sex annos*. Stone made a *Quære* whether he that comes in as Creditor, and has a Debt made over to him by the Commissioners, may not be barr'd by the Statute of Limitations: But this seems not to be within the Statute of Limitations; and the Commission being dated within the six Years, the Plea should have been *infra sex annos*, after the Commission: If a Commission be not taken out within the six Years, directed by Law for the suing of Debts, then to this Action the Defendant may plead the Statute of Limitations; but if Commission be taken out within six Years, and Assignment made within that Time, the Statute preserves this Debt, being to relieve Creditors against Fraud, &c. *1 Saund.* 37.

In Trespass against Commissioners of Bankrupt, if the Plaintiff declares of the Entry into his House, the Defendants may not plead not guilty, and give the special Matter in Evidence; but they ought to plead the Commission of Bankruptcy, and all the special Matter: If it had been for taking of Goods only, Plea may be not guilty generally. *Lit. Rep.* 356.

Action on the Case was brought by the Plaintiff for breaking his House, and taking his Goods away, by a Pretence of a Commission of Bankruptcy; whereas he was no Bankrupt, by reason whereof he was impaired in his Credit: The Defendant pleads, the Plaintiff brought an Action of Trespass for the same Trespass against him, and that he recovered therein; it is no
1 Plea,

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Plea, for the Action of the Case is for more than is contained in the Trespass, *viz.* impairing of Credit. *Style's Rep.* 201, 202.

Action of the Case will lie for saying of a Merchant in *London*, or any other Tradesman, that gets his Living by Buying and Selling, that he is a Bankrupt; but to say a Man owes more than he is worth, or is not able to pay his Debts, &c. is not actionable. To say a Man is a Bankrupt Rogue, Bankrupt Slave, &c. (being a Tradesman) or to say of a Man he will be a Bankrupt in two Days, &c. are Words that are actionable. *Noy* 158. 4 *Rep.* 19. *Hutt.* 52. *Dyer* 72, &c.

If a Man say to another, I will prove thee a Bankrupt; that such a Person is a Bankrupt, and fled beyond the Seas; that he is run away, and broke; or that he is not worth a Groat, but a hundred Pounds worse than nothing; that a Tradesman is a beggarly Knave, and not able to pay his Debts; to say of a Scrivener he is a broken Run-away, and dares not shew his Face, &c. are actionable. 211, &c.

To say of a Merchant he is broken, Action lies: But to say of a Merchant, Trust him not, for he will be thy Undoing, &c. no Action lies. And if a Merchant relinquish his Trade to live in the Country in the Nature of a Gentleman or Farmer, to call him Bankrupt is not actionable; but if afterwards he exercises his Calling again, and then is called Bankrupt, an Action lies. It is not needful in the Declaration to say he was a Merchant, but to say he was a Tradesman is sufficient. *Noy* 33. 158. *Cro. Eliz.* 541.

What Evidence is sufficient to prove a Man a Bankrupt, *vid. Siderf.* 411, &c. In a Suit in Chancery on Assignment of Lands, &c. the Defendant excepted to a Witness because he was a
Creditor,

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Creditor, and so might come in before the Division made of the Bankrupt's Estate: But after four Months, after any Dividend duly made, he is a good Witness. Depositions taken before the Commissioners were not allowed as Evidence, but a special Commission taken out. 2 *Reb.* 348. But this I think is alter'd by 5 *Geo.* which allows a Copy of the Record of Depositions, &c. to be given in Evidence, in case of the Death of Witnesses, &c.

If Commissioners will not pay a Creditor his rateable Part, he may have Action of Debt; but Chancery will relieve him more properly: And if the Commissioners do not pursue the Acts of their Commission, the Party injur'd must bring his Action, and set forth the finding of the Commissioners that the Debtor is a Bankrupt. *Good. Bank.* 194.

The Commissioners are not Judges, but have only an Authority.

PRECEDENTS, of Commissions of Bankrupts, Assignments of Com- missioners, &c. and Directions how to take out the Statute.

THE first Thing to be done in order to the taking out a Commission of Bankrupt against a Man, is to make Affidavit before a Master in Chancery that he is Indebted in a Sum sufficient to make him a Bankrupt, &c. according

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ing to the Statutes ; which the Creditors are to do as follows.

Affidavit made before a Master in Chancery, before the suing out a Commission of Bankrupt.

A. B. of, &c. maketh Oath that C. D. of, &c. is truly and justly indebted to him this Deponent (one of his Creditors) in the Sum of 100 l. and upwards, And that he is become a Bankrupt within the Meaning of one or some of the Statutes made against Bankrupts, as this Deponent believes.

A. B.

*Jurat' 10 die Maii
An. Dom. 1720.*

This Affidavit must be followed with a Petition to the Lord Chancellor, to the following Effect, viz.

A Petition to the Lord Chancellor to grant a Commission of Bankrupt.

To the Right Honourable Thomas Lord Parker, &c.

Humbly complaining,

Sheweth unto your Lordship, your Orator A. B. of, &c. as well for himself, as for all other the Creditors of C. D. of, &c. That whereas the said C. D. using and exercising the Trade of, &c. by way of Bargaining and Selling, Exchanging and Bartering, &c. and seeking his Trade of Living by Buying and Selling, upon just and good Causes, for Wares and Merchandizes to him sold and delivered, and also for ready Money to him lent, &c. being Indebted to your
Orator

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Orator in the Sum of 100 l. of late (that is to say) on or about, &c. past, to the Intent to Defraud and hinder your said Orator and other his Creditors of their just Debts and Duties to them due and owing, Did become Bankrupt within the several Statutes made against Bankrupts (*viz*) within the Statute made in the Parliament begun and holden at *Westminster* the Day, &c. in the 13th Year of the Reign of Queen *Elizabeth* concerning Bankrupts; and within the Statute made in the Parliament begun and holden, &c. (Here mention the Statute 1 and 2 *Fac. 1. 4 & 5 Ann. &c.* the several Statutes against Bankrupts) or within some or one of them. In tender Consideration whereof may it please your Lordship to grant unto your Orator his Majesty's most gracious Commission to be directed to such and so many Honest and Discreet Persons as to your Lordship shall seem meet, authorizing them thereby not only concerning the said Bankrupt, his Body, Lands and Tenements, Freehold and Customary, Goods, Debts, and other Things whatsoever, but also concerning all other Persons, who by Concealment, Claim, or otherwise, do or shall offend touching the Premises, or any Part thereof, contrary to the true Intent and Meaning of the said Statutes, or any of them. And also to do and execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Direction and Provision of the said Statutes.

And your Orator shall ever Pray, &c.

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The

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The Creditors are to name seven Commissioners at the least, (whereof two must be Esquires for the *Quorum*) of whom the Lord Chancellor strikes out two; and in Matters of great Weight there are nine Commissioners, &c. But before the Commission is granted, the Bond directed by the Statutes is to be given.

A Bond to be entred into to the Lord Chancellor, upon suing out a Commission of Bankrupt.

Noverint universi per presentes me A. B. de, &c. teneri & firmiter obligari prebonorabili T. Dom. Parker Baron. de, &c. Domino Cancellario Magne Britannie in Ducent. libris bone & legalis Monete hujus Regni solvend. eidem Domino Cancellario aut suo certo Attornato Executoribus Administratoribus vel Assignatis suis ad quam quidem solutionem bene & fideliter faciend. obligo me Heredes, Executores & Administratores meos firmiter per presentes Sigillo meo sigillat. dat. decimo die Maii Anno Regni Dom. Georgii quinto Annoque Dom. 1720.

The Condition of this Obligation is such, That if the above-bound *A. B.* do and shall before the major Part of the Commissioners to be appointed in a Commission of Bankrupt against *C. D.* of, &c. prove that the said *C. D.* is justly indebted unto the said *A. B.* in the Sum of 100*l.* And in like Manner prove that the said *C. D.* is become a Bankrupt within some or one of the Statutes made against Bankrupts, then this Obligation to be void, &c.

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The Commission of Bankrupt.

GEORGE by the Grace of God of Great Britain, France and Ireland, King, Defender of the Faith, &c. To our trusty and well-beloved E. F. G. H. J. K. &c. Greeting. Whereas we are inform'd that C. D. of, &c. using and exercising the Trade of, &c. by way of Bargaining, Exchange, Bartery and Chevifance, seeking his Trade of Living, Did by Buying and selling about six Months since become Bankrupt within the several Statutes made against Bankrupts, to the Intent to defraud and hinder A. B. of, &c. and other his Creditors of their just Debts and Duties to them due and owing. We therefore minding the due Execution as well of the Statute touching Orders for Bankrupts made in the Parliament begun and holden at *Westminster* the second Day of *April* in the 13th Year of the Reign of *Elizabeth* Queen of *England*, made and provided, as of the Statute made in the Parliament begun and holden at *Westminster* the 19th Day of *March*, in the first Year of the late King *James* of *England*, *France* and *Ireland*, and of *Scotland* the 37th, intituled, *An Act for the further Relief of Creditors against such as shall become Bankrupts*. And also of the Statute made in the Parliament begun and holden at *Westminster* the 19th Day of *Febr.* in the 21st Year of the said late K. *James* I. of *England*, *France* and *Ireland*, and of *Scotland* the 37th intituled, *An Act for the further Description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts*. And also of the Statute made in the Parliament begun and holden at *Westminster* aforesaid the 14th Day of *June* in the 4th Year of the Reign of her late Majesty

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Queen Anne, intituled, *An Act to prevent Frauds committed by Bankrupts.* And also of an Act made in the second Session of the same Parliament, intituled, *An Act to explain and amend the said last mentioned Act.* And also of the Statute made in the 5th Year of our Reign, &c. Upon Trust of and in the Wisdom, and Fidelity which we have conceived in you, Do by these Presents name, assign, appoint, constitute and ordain you our special Commissioners for the Purpose aforesaid, Giving full Power and Authority unto you or four or three of you to proceed according to the said Statutes, and every or any of them, not only concerning the said Bankrupt, his Body, Lands and Tenements, Freehold and Customary, Goods, Debts, and other Things whatsoever, but also concerning all other Persons, who by Concealment, Claim, or otherwise, do or shall offend touching the Premises, or any Part thereof, contrary to the true Intent and Meaning of the said Statutes, or any of them, And to do and execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Ordinance and Provision of the same Statutes, Willing and commanding you, four or three of you to proceed to the Execution of this our Commission, according to the true Intent and Meaning of the said Statutes, with all Diligence and Effect. Witness our self at *Westminster* the 14th Day of *May* in the 5th Year of our Reign.

N. B. If after Seizure and before Distribution of the Bankrupt's Estate, all the Commissioners but two, or if they of the *Quorum* should happen

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pen to die, the rest cannot proceed alone; but a new Commission must be sued out, and the new Commissioners may call the old ones to account, &c. Sometimes Affidavit is made that the Effects of the Bankrupt lie in such a Place where the Commission ought to be executed, &c.

Fees of Suing out a Commission of Bankrupt.

	l.	s.	d.
Drawing the Affidavit	00	04	06
To the Secretary of the Bankrupts	02	02	00
To his Clerk	00	05	00
Private Seal	02	02	00
To my Lord Chancellor's Secretary, &c.	02	02	00
To the Sealer	00	10	00
To the Porter	00	02	06
To the Hamper	00	03	06
For the Commission	05	16	02
Bond and Docquet	00	06	06
To the Clerk of the Docquets	00	10	00
Fee of Solliciting, &c.	01	01	00
	15	05	02

Proclamation for a Bankrupt to appear, pursuant to the Stat. 13 Eliz. and 1 Jac. 1.

O yes, O yes, O yes, The King's Majesty doth straitly charge and command C. D. late of, &c. that he on, &c. do yield his Body before E. F. Esq; G. H. I. K. &c. his Majesty's Commissioners named and appointed for the Execution of the Statutes of Bankrupts against the said C. D. or the Major Part of them that shall be then present, at the House of, &c. upon the Pains

O 3 and

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and Penalties in the said Statutes in that Case provided and appointed.

God save the KING.

The Examination of a Bankrupt.

The Examination of C. D. a Bankrupt, taken upon Oath this Day, &c. by E. F. G. H. I. K. &c. his Majesty's Commissioners, &c.

The said C. D. being sworn and examined upon his Oath, saith, that the Paper-Book with Parchment Covers, which this Deponent did deliver in and exhibit to the Commissioners on, &c. last, intituled, *An Account of the Estate and Effects of C. D. &c.* doth contain and is a full and true Account, Disclosure and Discovery, how and in what Manner, to whom, and upon what Account and Consideration he hath disposed, assigned or transferred any of his Goods, Wares, Merchandize, Money, or other Effects or Estates, and all Books, Papers and Writings, relating thereunto, of which he was possessed, or in or to which he was any ways interested and intituled, or which any Person or Persons had or hath, or have had in Trust for this Deponent or his Use on or about, &c. being the Time of this Deponent's first absconding, or at any Time since (his own, Wife and Childrens Wearing Apparel only excepted). And this Deponent also saith, that he hath delivered up to L. M. N. O. &c. the Assignees under the said Commission, all such Part of his Goods, Wares, Merchandizes, Money, and other Effects or Estate whatsoever, and all Books, Papers and Writings relating thereunto, as were in this Deponent's

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ponent's Custody or Power, the Day, &c. last past, being the Time of this Deponent's Surrender to the Commissioners, or any Time since. And this Deponent further saith, that he hath not at any Time made any Gift or Assignment, or other Conveyance or Disposition of any Part of his Estate or Effects, with intent to Defraud his Creditors, or whereby he expect any Benefit or Advantage to himself or Family.

C. D.

Interrogatories administered to Witnesses on a Commission of Bankrupt.

Interrogatories are to be framed according to the Matters to be examined into. Some Commissioners will have ready all the general Interrogatories that will fit the Examinations throughout all the Statutes; and some Commissioners reject all Interrogatories, lest thereby the Witnesses by their Knowledge beforehand might frame Evasions; but Serjeant Gooding blames this Way as a careless Behaviour, and too slight for Matters so weighty, considering the Penalties attending Offenders against the Statutes; and says, that where Interrogatories are required, the Commissioners are bound to give them, especially in the Cases of Concealment, and Debts the Bankrupt. *Good. 90, 91.*

To prove Debts, interrogate thus: Do you know of any Moneys owing to the said C. D. on, &c. the Time of his becoming a Bankrupt, or since, and the same unpaid; or any Goods sold and delivered by him to any Person or Persons; set forth the same, and to whom, and for what; whether was there any, and what Security,

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rity, by Bill, Bond, Note, or otherwise, given for the same? Were you a Witness to such Bill, Note, &c. and did you see the same sign'd, &c. and subscribe your Name as a Witness thereto, declare what you know or believe herein.

Form of Depositions of Witnesses.

Depositions of Witnesses had, and taken the Day, &c. in the Year of the Reign, &c. and at other Times and Places by Adjournment, by E. F. Esq; G. H. I. K. &c. by Virtue of his Majesty's Commission of Bankrupt under the Great Seal of *England*, (grounded upon the several Statutes made concerning Bankrupts) bearing Date at *Westminster* the Day, &c. awarded against C. D. of, &c. and directed to the said E. F. G. H. &c. Commissioners thereby appointed for the Execution thereof, or any four or three of them, as followeth:

L. M. of, &c. being sworn and examined, deposeth as followeth.

This Deponent saith, that &c. is justly indebted unto C. D. the Bankrupt in the Sum of, &c. for Goods sold and delivered by the said C. D. on, &c. and that he this Deponent was then Servant to the said C. D. and present at the Sale, &c.

N. O. of, &c. being sworn, deposeth, &c.

A Warrant for Witnesses to appear.

Whereas the King's Majesty's Commission under the Great Seal of Great Britain bearing Date, &c. last past at *Westminster*, grounded upon the several Statutes made concerning Bank-

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Bankrupts hath been awarded against C. D. of, &c. and directed to us who have hereunto subscribed our Names, and put our Seals, and to, &c. (the rest of the Commissioners) And we being the major Part of the Commissioners therein named have taken upon us the Execution of the said Commission. And it appears to us upon good and sufficient Proof that the said C. D. hath for several Years last past gained his Living by Buying and Selling of, &c. and other Merchandize, and thereby became indebted to several Persons in the Sum of, &c. And whereas upon good and sufficient Proof it appearing to us that the said C. D. is a Bankrupt to all Intents and Purposes within the Meaning of the several Statutes made against Bankrupts some or one of them, before the suing forth of the said Commission. And we are credibly informed that you L. M. N. O. &c. (to whom this our Warrant is directed) are necessary Witnesses for the Discovery of the Estate of the said C. D. These are therefore in his Majesty's Name, and by Virtue of the Statutes and Commission aforesaid, to require, charge and command you, and every of you, that you be and personally appear before us at, &c. upon, &c. then and there to answer such Questions and Interrogatories as shall be then and there demanded of and administered to you concerning the said C. D. and his Estate. Herein you are not to fail under the Penalties in and by the said Acts provided against Contemners of the said Authority. Given, &c.

This Warrant may be thus abstracted, and left with them severally.

L. M.

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L. M.

You are hereby summoned personally to be and appear before the Commissioners on, &c. next by Nine of the Clock in the Forenoon at, &c. in the County of, &c. concerning a Commission of Bankruptcy in Prosecution against C. D. of, &c. And hereof you are not to fail at your Peril. Dated, &c.

E. F.

G. H.

I. K. &c.

Oath to be administred to Witnesses.

You are here produced as a Witness, by Virtue of a Commission out of the High Court of Chancery to us and others directed, to be examined concerning the Bankruptcy of C. D. late of, &c. You are therefore to such Questions and Interrogatories as shall be administred unto you relating to the said C. D. his Trade or Profession, his Absconding, and other Acts which he hath done or suffered, by which he may be discovered to be a Bankrupt, and also concerning his Lands and Tenements, Goods and Chattels, Debts and Duties, Frauds and Concealments, and other Matters and Things, in Obedience to the said Commission, and pursuant to the several Statutes made concerning Bankrupts, true and direct Answer to make, and swear the Truth, the whole Truth, and nothing but the Truth.

So help you God.

Oath

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Oath proving a Debt from the Bankrupt.

You shall swear that C. D. late of, &c. at the Time of his becoming a Bankrupt was justly and *bona fide* indebted to you in the Sum of, &c. and that you have not been since paid or satisfied the same, or any Part thereof.

Every Man is to subscribe his Debt; and the Commissioners are to enquire whether the Debts were contracted during the Trade.

Declaration by the Commissioners that a Man is a Bankrupt.

We whose Names are under-written being the major Part of the Commissioners in the Commission named against C. D. late of, &c. having begun to put the said Commission in Execution, have on the Oath and Examination of divers credible Witnesses found that the said C. D. became a Bankrupt before the Date and suing forth of the said Commission. And we do hereby declare that the said C. D. is a Bankrupt accordingly.

E. F.

G. H.

I. K.

Certificate to the Lord Chancellor of the Party's being a Bankrupt, and of his Surrendring himself, &c.

*To the Right Honourable Thomas Lord Parker,
Lord Chancellor of Great Britain.*

We E. F. G. H. and I. K. the major Part of the Commissioners named and authorized in and by

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by a Commission of Bankrupt awarded against C. D. of, &c. bearing Date at *Westminster* the Day, &c. last past, having begun to execute the said Commission, and found that the said C. D. became a Bankrupt before the Date and suing out of the said Commission, within the true Intent and Meaning of one or some of the Statutes made against Bankrupts, Do humbly Certify to your Lordship that the said C. D. did on, &c. Surrender himself to us, and submit himself to be examined upon Oath before us from Time to Time, and in all Things to conform himself to an Act made in the 4th and 5th Years of her late Majesty Queen *Anne*, intituled, *An Act to prevent Frauds frequently committed by Bankrupts, &c.* and to the several other Statutes made against Bankrupts. Whereupon and for the better Discovery of the said Bankrupt's Estate, and putting in Execution the said Acts, We the said *E. F. G. H. &c.* have had several Meetings for the Examination of the said C. D. and caused due Notice to be published in the *Gazette* of the Time and Place when and where we intended to finish his said Examination, to the Intent that the Creditors of the said C. D. might be heard against the making this present Certificate, and also admitted to prove their Debts, And several Creditors having proved their Debts, and none shewn any Cause against the making this Certificate. We do therefore further Certifie to your Lordship that the said C. D. hath upon such Examination made a Discovery of his Estate and Effects, and in all Things conform'd himself according to the Direction of the said late Acts, and that there doth not appear to us any Reason to doubt the Truth of such Discovery, or that the same is not a full Discovery of all the Estate and Effects

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fects of the said C. D. And the rather for that the Persons who have signed this Certificate testifying their Consents to the same are full four Parts in five in Number and Value of the Creditors of the said C. D. who have duly proved their said Debts. Witness our Hands and Seals, &c.

E. F.

G. H.

I. K.

Attestation of the Creditors.

We whose Names are hereunto subscribed Creditors of the above-named C. D. do hereby testify our Consent to the above-written Certificate; and also to the Discharge of the said, &c. Witness our Hands, &c.

A. B. C. D. E. F. L. M.

N. O. P. Q. &c.

Oath of the Certificate's being fairly obtained; required by 5 Geo.

I C. D. do make Oath, that the Certificate of the Commissioners of Bankruptcy, and the Consent of the Creditors thereupon hereto annexed, were obtained justly and fairly without any Fraud or Deceit in me or by my Means or Procurement.

C. D.

An Allowance of the Certificate by the Lord Chancellor.

Upon the Oath of C. D. the Bankrupt, that the Certificate within written was justly obtained, and on due Consideration of the same I do hereby

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hereby (according to the Direction of the Statutes) allow of and confirm the said Certificate.

Parker, Canc^r.

An Order of Commissioners to come in and pay Contribution-Money.

We E. F. G. H. and I. K. &c. being the major Part of the Commissioners named and authorized in and by a Commission of Bankrupt under the Great Seal of *Great Britain* bearing Date at *Westminster* the Day, &c. awarded against C. D. of, &c. Do hereby order that the Contribution-Money to be raised towards defraying the Charges of suing forth and prosecuting the said Commission and Recovery of the Estate of the said C. D. by Virtue thereof be 1 s. per Pound. And all and every Creditor and Creditors of the said C. D. who have already sought, or shall hereafter in due Time come in and seek Relief by Virtue of the said Commission are hereby required to pay the said Sum of 1 s. in the Pound Contribution-Money for every Pound or 20 s. Debt which they claim to be due and owing unto them severally and respectively by and from the said C. D. And we do further order that the said Contribution-Money be paid unto, &c. whom we have appointed Treasurer to receive and disburse the same as Occasion shall require. Given under our Hands and Seals, &c.

N. B. The Commissioners are to take Security from the Person appointed Treasurer, that he shall yield a just and true Account of the several Receipts of the Contribution-Money, and the Payments thereof, &c. when thereunto requir'd.

Notice

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Notice to Creditors of making a Dividend.

We whose Names are subscribed, being the major Part of the Commissioners named and authorized in the Commission of Bankrupt awarded against C. D. of, &c. the four Months since the Date and suing forth of the said Commission having been long since elapsed and expired, and the Creditors who prosecute the same having desired that we should proceed to make a Dividend of the Estate by us already discovered and assigned, as by the Statutes we are impowered, Do therefore by these Presents give fourteen Days Notice of such Dividend to be made, and that we do intend and appoint to meet for making the said Dividend on the Day, &c. next ensuing by Ten of the Clock in the Forenoon of the same Day at the Irish Chamber in Guildhall, London. And such Creditors who do intend to come into the said Commission for their respective Debts, are to take care to pursue the Directions of the said Statutes in paying in their Contribution-Money according to our Order, lest they should be excluded the Dividend. And they are also at the same Time and Place to come prepared to make due Proof of their respective Debts. Dated the Day, &c.

E. F.

G. H.

I. K.

A Deed of Distribution amongst Creditors of all the Bankrupt's Effects.

This Indenture made, &c. Between E. F. of, &c. Esq; G. H. and I. K. Gent. of the one Part,

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Part, and *L. M.* of, &c. Merchant, *N. O. P. R.* &c. Creditors of *C. D.* late of, &c. Vintner, of the other Part. Whereas the King's Majesty's Commission under the Great Seal of *Great Britain*, grounded upon the several Statutes concerning Bankrupts, bearing Date at *Westminster*, &c. Hath been awarded against the said *C. D.* and directed to the said *E. F. G. H. I. K.* and also, &c. thereby giving full Power and Authority unto the said Commissioners, three or four of them, whereof the said *E. F.* of, &c. to be one, to execute the same, as by the said Commission Relation being thereunto had, it doth and may more fully and at large appear. And whereas the said *E. F. G. H.* and *I. K.* having begun to put the said recited Commission in Execution upon due Examination of Witnesses and other good Proof before them taken, have found that the said *C. D.* for the Space of two Years and upwards before the Date and suing forth of the said Commission, did use and exercise the Trade or Business of a Vintner at his Dwelling-House commonly called or known by the Name or Sign of, &c. and had used and exercised the same Trade in other Houses for several Years before, and bought and sold Wines as other Persons of the same Trade use to do, and sought and endeavoured to get his Living by buying and selling in the said Trade or Way of a Vintner. And that the said *C. D.* so seeking and endeavouring to get his Living by buying and selling as aforesaid during the Time of his said Trading and Dealing, did become justly and truly indebted, and still doth owe and stand indebted unto the said *L. M. N. O. P. R.* &c. and several others his Creditors, in several Sums of Money amounting in the whole to the Sum of 200 *l.* and

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and upwards. And being so Indebted, he the said C. D. did in the Judgments of the said Commissioners Parties to these Presents become Bankrupt to all Intents and Purposes within the true Intent and Meaning of the several Statutes made concerning Bankrupts, or within some or one of them, before the Date and suing forth of the said recited Commission. And whereas the said Commissioners Parties to these Presents in further Execution of the said recited Commission upon the like due Examination of Witnesses and other good Proof before them had and taken, having further found that there were divers Debts, and Sums of Money due, owing and belonging unto the said C. D. and to his Estate, by and from several Persons. And also that the said C. D. at the Time of the executing of the said Commission had and was possessed of divers Goods, Wares and Merchandizes then remaining and being in and about his said Dwelling-house, They the said Commissioners Parties to these Presents, Did by Indenture under their Hands and Seals duly executed bearing Date, &c. for the Considerations and the Uses, Intents and Purposes therein mentioned, Order, dispose, assign and set over unto the above-named L. M. N. O. &c. their Executors and Administrators, All and singular the Debts, Sum and Sums of Money, Wares and Merchandizes, and all other the Estate of the said C. D. particularly mentioned in the Schedule or Inventory to the said Deed or Indenture of Assignment annexed, as by the said Deed or Indenture may more fully and at large appear. And whereas the said L. M. and N. O. have actually gotten and received into their Hands or Possession by Virtue of the said Assignment divers Wares, Goods and Mer-

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chandizes of or belonging to the said C. D. Part whereof they have sold, and have received the Money due for the same, and the rest thereof are still remaining in their Hands or Custody, being of the Value of, &c. as the same have been appraised by two skilful and indifferent Men, the Particulars of which Goods, Wares and Merchandizes are mentioned and expressed in the Schedule indented hereunto annexed. And whereas they the said L. M. and N. O. have also received several Debts or Sums of Money owing to the Estate of the said C. D. amounting to, &c. But the Sum of, &c. is still unreceived by the said Assignees, the Particulars whereof are mentioned and expressed in the said Schedule hereunto annexed, &c. And whereas the said Commissioners Parties to these Presents in further Execution of the said Commission upon sufficient Proof upon Oath before them taken have also found, &c. And whereas the several other Creditors above-named have claimed and do claim to be due and owing to them severally and respectively by and from the said C. D. several other Sums of Money amounting to the Sum of, &c. the Particulars whereof are also mentioned, set down and expressed in the said Schedule indented to these Presents annexed. And whereas the said Creditors above-named have already made, and do by these Presents (testified by their being Parties to and signing and sealing hereof) make it their Request unto the said Commissioners Parties to these Presents, to order, distribute, divide and set over unto and amongst them the said Creditors above-named the said Goods, Wares, Merchandizes, Debts and Sums of Money in the said Schedules indented hereunto annexed mentioned
and

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and expressed for and towards Payment and Satisfaction of their said respective Debts. And whereas the full Space of four Months since the Date and suing forth of the said Commission is fully expired, and sufficient Notice has been given of the intended making of this present Deed of Distribution by publishing the same in the *Gazette*. And no other Creditor or Creditors of the said C. D. than the Creditors above-named as Parties to these Presents have as yet come in and sought Relief by the said Commission, or paid or contributed towards the Charge thereof according to the Direction of the said Statutes for any Debt or Debts due or owing, or claimed to be due or owing by or from the said C. D. Now this Indenture witnesseth, that the said Commissioners Parties to these Presents by Force and Virtue of the said recited Commission, and of the Statutes therein mentioned, and in further Execution thereof, and to the End that a due and legal Distribution may be had and made of the said Goods, Wares, Merchandizes, Debts and Sums of Money in the said Schedule indented hereunto annexed particularly mentioned and expressed, Have Ordered, Distributed, Disposed, Divided, assigned, and set over, and by these Presents do as much as in them the said Commissioners lieth, and they lawfully may, Order, Distribute, Divide, assign and set over unto and amongst the said Creditors above named, Parties to these Presents, All and singular the said Goods, Wares, Merchandizes, Debts, and Sums of Money above-mentioned in Manner following (that is to say) To each and every of them the said Creditors above-named a Part and Portion of the same Share and Share alike, according to the Quan-

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tity and Proportion of his or their several and respective Debts in the Schedule indented hereunto annexed mentioned and expressed, (*viz.* to the said *L. M.* the Sum of, &c. to the said *N. O.* &c.) To have, hold, receive and enjoy the said Goods, Wares, Merchandizes, Debts, and Sums of Money, and every Part and Parcel thereof, unto and amongst the said Creditors Parties to these Presents, their Executors and Administrators, as their own proper Estate for ever for and towards Payment or Satisfaction of their said several and respective Debts, subject nevertheless to the Proviso or Condition following. Provided always, and upon and under this express Condition, and it is hereby declared to be the true Intent and Meaning of these Presents, and of all the Parties to the same, that all and every the Creditor and Creditors who have not already made due Proof of his and their Debts so claimed as aforesaid, before them the said Commissioners Parties to these Presents, or the major Part of the Commissioners by the said Commission authorized, or otherwise by due Course of Law to be by them allowed of and signed in Writing under their Hands or the Hand of one of them, If they shall neglect or refuse to make such full and due Proof of his or their Debts so claimed as aforesaid within the Space of, &c. next after Notice in Writing for that Purpose shall be given to him or them, or left at his or their House of Habitation, Lodging or last Place or Places of Abode, That then and in such Case every such Person and Persons respectively shall be and are hereby wholly excluded and debarred out of this present Deed of Distribution and of and from all or any Share, Benefit or Advantage hereby arising, or to be hereby had or made for
or

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or in respect of his or their Debt or Debts so claimed as aforesaid, or so much thereof as shall not be duly proved and admitted of in Manner aforesaid, according to the true Intent and Meaning of these Presents. And that then and thereupon the Part, Share and Proportion of the said Goods, Wares, Merchandizes, Debts, and Sums of Money by these Presents intended to be divided or distributed, or which might or ought to have been divided or distributed among, or belonged or been paid unto such of the said Creditor or Creditors so making Default of Proof as aforesaid, Shall be and remain, and the same is hereby distributed, divided, and set over unto and amongst such other of the above-named Creditors of the said C. D. as have already or shall hereafter duly and fully prove their said Debts in such Manner as is herein before-mentioned and appointed, any thing in these Presents contained to the contrary thereof in any wise notwithstanding. And all and every the said Creditors Parties to these Presents for themselves severally and respectively, and for their several and respective Heirs, Executors and Administrators, and not jointly or one for the other, Do and each of them doth covenant, promise, grant and agree to and with the said Commissioners Parties to these Presents, their respective Executors and Administrators, and to and with every of them, by these Presents, that they the said L. M. N. O. and the Rest of the Creditors of the above-named C. D. and their respective Executors and Administrators, shall and will from Time to Time, and at all Times hereafter, well and sufficiently save, defend, keep harmless and indemnified the said Commissioners Parties to these Presents, and the rest

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of the Commissioners by the said Commission authorized, their and every of their Lands, Tenements, Goods, Chattels and Estates, and every Part thereof, of, from and against all and all manner of Actions, Suits, Arrests, Costs, Charges, Expences, Damages and Demands whatsoever, which they or any of them shall or may suffer, sustain or be put unto for or by Reason or Means of this present Deed of Distribution, or any other Act, Matter or Thing whatsoever by them, or either or any of them, lawfully done or executed, or to be done or executed by Virtue of the said Commission or any of their lawful intermeddling in the Estate of the said C. D. by Force, Virtue or Colour thereof. In Witness, &c.

An Assignment of Goods and Chattels of a Bankrupt to one of the Creditors upon Trust to be sold, &c.

This Indenture made, &c. Between E. F. G. H. I. K. &c. of the one Part, and L. M. of, &c. of the other Part. Whereas the King's Majesty's Commission under the Great Seal of Great Britain grounded upon the several Statutes made concerning Bankrupts bearing Date, &c. hath been awarded against C. D. of, &c. and directed to the said E. F. G. H. I. K. &c. thereby giving full Power and Authority unto them the said Commissioners, or three of them (whereof the said E. F. or G. H. to be one) to execute the same, as by the said Commission doth and may more fully appear. And whereas the said Commissioners having begun to put the said Commission in Execution upon due Examination of Witnesses and other good Proof upon Oath before them taken, do find that the said C. D. hath
for

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for the Space of six Years before the Date of the Commission, or thereabouts, used and exercised the Trade and Profession of, &c. at his House, &c. and sought and endeavoured to get his Living by Buying and Selling. And that he the said C. D. so seeking and endeavouring to get his Living by buying and selling during the Time of the said Trading and Dealing, Did become justly and truly indebted unto the above-named L. M. and other his Creditors in the Sum of 500 l. and upwards, and being so indebted, he the said C. D. did in the Judgment of the said Commissioners become Bankrupt to all Intents and Purposes within the Meaning of the several Statutes made concerning Bankrupts, or within some or one of them, before the Date and suing forth the said Commission. And whereas the said Commissioners having also found out and discovered that the said C. D. at the Time, and since he became a Bankrupt, as aforesaid, was possessed of, or interested in, or well intituled to divers Goods, Wares, Merchandizes, Household-stuff and Implements of Household, Bedding, Linen, Brass, Pewter, and other Commodities mentioned and particularly expressed in the Schedule indented hereto annexed. And also that there are divers Debts, Sum and Sums of Money due and owing to the said C. D. and his Estate, by and from divers and sundry Persons, the Particulars of which said Debts, and the several and respective Persons Names are also mentioned, set down and expressed in the said Schedule herunto annexed. Now this Indenture witnesseth, That the said Commissioners by Force and Virtue of the said Commission, and the several Acts of Parliament therein mentioned and ex-

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pressed, and in Consideration of the Covenants hereinafter on the Part and Behalf of the said *L. M.* his Heirs, Executors and Administrators, covenanted to be performed and done, Have Ordered, Assigned and set over, and by these Presents do as much as in them the said Commissioners lieth, and they lawfully may, order, assign and set over unto the said *L. M.* the before-mentioned Goods, Wares, Merchandizes, Household-stuff, and Implements of Household, Bedding, Linen, Brass, Pewter, and other Commodities in the said Schedule mentioned, and every Part and Parcel thereof, and all other Goods, Wares and Merchandizes belonging to the said *C. D.* or his Estate, at the Time when or since he became a Bankrupt as aforesaid, And also all the Debts, Sum and Sums of Money mentioned and expressed in the said Schedule annexed, And all other Debts at the Time of the said *C. D.*'s becoming Bankrupt as aforesaid, or at any Time since due and owing unto the said *C. D.* by or from the Persons therein named as Debtors, or any other Person or Persons whatsoever, To have and to hold the said Goods, Wares, Merchandizes, and all and singular other the Premises, and every Part thereof, and also the said Debts, and Sums of Money so mentioned, set down and expressed in the said Schedule annexed, And also all Debts, Sum and Sums of Money whatsoever due and owing to the said *C. D.* and his Estate, by and from the respective Persons therein named and mentioned as Debtors, or any other Person or Persons whatsoever, to the said *L. M.* his Executors and Assigns for ever In Trust, to and for the Use, Benefit and Advantage of the said *L. M.* and of all other the Creditors of the said *C. D.* who have already sought,
or

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or shall hereafter in due Time come in as Creditors into the said Commission, and seek Relief thereby, and contribute to the Charges thereof, according to the Direction and Limitation of the several Statutes in that Behalf made and provided, and to or for none other Use, Intent or Purpose whatsoever. And the said *L. M.* for himself, his Heirs, Executors and Administrators doth covenant, promise and grant to and with the said Commissioners, and to and with each and every of them in Manner following (that is to say) that he the said *L. M.* his Heirs, Executors or Administrators, or some or one of them, shall and will with all convenient Speed sell and dispose of the said Goods, Wares, Merchandizes and Premises for the most he can get for the same, and by all lawful Ways and Means sue for and recover the Debts mentioned in the said Schedule hereto annexed, And from and after the Recovery and Receipt thereof, shall and will upon reasonable Request and Notice in Writing to him for that Purpose made or given by the said Commissioners, or by the major Part of them, make and give a just, true and perfect Account unto the said Commissioners of all and every Sum and Sums of Money as he shall have raised by such Sale, as soon as he shall have received the same. And of all Sums of Money as he the said *L. M.* shall have raised and received out of the Debts hereby assigned by Force and Virtue of these Presents, And shall pay over all such Sums of Money as he shall have so raised, gotten, had or received unto the said Commissioners, or the major Part of them, or dispose thereof as they shall order, direct or appoint, To the End the said Commissioners may order, distribute, divide and dispose

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pose thereof for and towards the Payment and Satisfaction of the Debts due and owing by the said C. D. to such of his Creditors who have already sought, or shall hereafter in due Time come in and seek Relief by Virtue of the said Commission, and contribute to the Charges thereof as aforesaid. And further that he the said L. M. his Heirs, Executors and Administrators shall and will from Time to Time, and at all Times hereafter well and sufficiently save, defend and keep harmless and indemnified the said Commissioners, and every of them, their and every of their Executors and Administrators, and their Bodies, Lands and Tenements, Goods and Chattels, of and from all Manner of Actions, Costs, Suits, Arrests, Losses, Damages and Expences whatsoever, which they or any of them shall or may suffer, sustain, or be put unto for or by reason of this present Deed of Assignment, or any other Matter or Thing whatsoever lawfully done or executed by Virtue of the said Commission, or their or any of their lawful Intermeddlings or Dealings in any of the Estates of the said C. D. by Force and Virtue thereof. In Witness, &c.

A Bargain and Sale and Assignment of Lands of a Bankrupt, made by Commissioners to one of the Creditors.

This Indenture made, &c. Between E. F. G. H. I. K. &c. of the one Part, and L. M. of, &c. of the other Part. Whereas the King's Majesty's Commission, &c. [*Here recite the Commission, and Proof of the Bankruptcy, &c.*] And whereas the said Commissioners Parties to these Presents have also by due Examination of Witnesses found

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found out and discovered, or it otherwise appeareth unto them that the said C. D. at the Time he became a Bankrupt as aforesaid was seized in his Demesne as of Fee or of some other good Estate of Inheritance, or otherwise interested or intitled in and to one Messuage or Tenement situate, lying and being in, &c. containing, &c. together with all and singular the Buildings, Outhouses, Hereditaments and Appurtenances to the said Messuage and Premises belonging, or in any wise appertaining, or at any Time heretofore used, occupied or enjoyed or accepted, reputed, had or taken, as Part, Parcel or Member thereof, which said Messuage and Premises are now or lately were in the Tenure or Occupation of, &c. Now this Indenture witnesseth, that the said Commissioners Parties to these Presents in further Execution of the said Commission and Statutes therein mentioned, and by Force and Virtue thereof, and for and in Consideration of the Trusts and Covenants herein after on the Part and Behalf of the said L. M. his Heirs and Assigns, covenanted to be done, performed, fulfilled and kept, And also of 5 s. of, &c. to them the said Commissioners Parties to these Presents in Hand paid by the said L. M. the Receipt whereof is hereby acknowledged, Have bargained, sold, ordered and assigned, and by these Presents do as much as in them the said Commissioners Parties to these Presents lieth, and they lawfully may, bargain, &c. unto the said L. M. his Heirs and Assigns, All and singular the said Messuage or Tenement and Premises above-mentioned, And also all other Messuages, Lands, Tenements and Hereditaments whatsoever, whereof or wherein he the said C. D. had or claimed

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claimed at the Time of his becoming a Bankrupt as aforesaid, or at any Time since, any Estate of Freehold or Inheritance situate, lying and being in, &c. aforesaid, with their and every of their Appurtenances, together with all Ways, Waters, Water-courses, Commons, Lights, Easements, Buildings, Gardens, Profits, Commodities, Privileges and Emoluments whatsoever to the said Messuage, Lands, Tenements and Premises, or any Part thereof, belonging or in any wise appertaining. And therewithal now or at any Time heretofore used, occupied, possessed and enjoyed, or accepted, reputed, taken or known, as Part, Parcel or Member thereof, And the Reversion and Reversions thereof, with the Rents, Issues and Profits of the same, And all the Estate, Right, Title, Property, Interest, Claim and Demand whatsoever of him the said C. D. at the Time of his becoming Bankrupt as aforesaid, of, in and to the said Premises, and any Part or Parcel thereof, To have and to hold the said Messuage and Tenement, Lands and Premises to the said L. M. his Heirs and Assigns for ever, in Trust nevertheless to and for the Use and Behoof of the said L. M. and all other the Creditors of the said C. D. who have already sought, or shall hereafter in due Time come in and seek Relief by Virtue of the said Commission, and contribute towards the Charge thereof, according to the Directions of the several Statutes in the said Commission mention'd. And the said L. M. for himself, his Heirs, Executors, Administrators and Assigns, doth covenant, promise and agree to and with the said Commissioners Parties to these Presents, and every of them, their and every of their Executors and Administrators by these Presents in
Manner

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Manner following (that is to say) that he the said *L. M.* his Heirs and Assigns, or some or one of them shall and will with all convenient Speed Enter upon and take Possession of the said Messuage, Lands or Tenements, and all other the Premisses with their Appurtenances herein before bargained, sold and assigned, Or otherwise shall and will forthwith and without Loss of Time Sue for and endeavour to recover the same, and after Possession had and obtained shall and will with like convenient Speed make Sale or other Disposition of the said Premisses to and for the best Price he or they may or can *bona fide* get or procure for the same. And further that he the said *L. M.* shall and will from Time to Time, and at all Times hereafter, upon reasonable Request and Notice, render and give unto the said Commissioners Parties to these Presents, or unto such other Commissioners, as by any future Commission against the said *C. D.* shall be hereafter authorized to take the same at such Time and Place, Times and Places as they shall appoint, a true, just, fair and perfect Account in Writing of whatsoever Money or other Satisfaction he the said *L. M.* his Heirs or Assigns, shall have had, recovered or received by Virtue or Means of this present Deed of Bargain, Sale and Assignment, or otherwise, out of the Estate of the said *C. D.* And all such Moneys or other Satisfaction as upon every such Account shall appear to be had and received by him the said *L. M.* his Executors or Administrators, he the said *L. M.* his Heirs or Assigns, or some or one of them, shall and will well and truly pay or cause to be paid unto the said Commissioners Parties to these Presents, or to be authorized as aforesaid, to the End the same may be by them ordered,

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ordered, disposed, and proportionably distributed and divided, and set over unto the said *L. M.* his Executors and Administrators, and all other the Creditors of the said *C. D.* who have already sought, or shall hereafter come in and seek Relief for their respective Debts by Virtue of the said Commission, and contribute towards the Charges thereof according to the said several Statutes, and the true Intent and Meaning of the said Commission, and of such Deed or Deeds of Dividend and Distribution, as shall be hereafter made and executed of or concerning the same: And lastly the said *L. M.* for himself, his Heirs, Executors, Administrators and Assigns, doth hereby covenant, grant and agree to and with the said Commissioners Parties to these Presents, their Executors, Administrators and Assigns, that he the said *L. M.* his Heirs, Executors, Administrators and Assigns, shall and will from Time to Time, and at all Times hereafter well and sufficiently save, keep harmless and indemnified them the said Commissioners Parties to these Presents, their and every Bodies Lands, Tenements, Goods and Chattels, of and from all manner of Action and Actions, Suits, Arrests, Troubles, Charges, Damages and Expences whatsoever, which they, any or either of them, shall or may suffer, sustain, or be put unto for or by reason of this present Deed of Assignment, or of any Act or Acts, Thing or Things whatsoever, lawfully done or executed by them, or any or either of them, by Virtue of the said Commission, or by their, any or either of their lawful intermeddling with the Estate of the said *C. D.* In Witness, &c.

Of LICENCES to Debtors, Compositions, &c.

I Shall conclude this Treatise with some Observations on Licences to Debtors, giving them Time for the Payment of their Debts; and Deeds of Composition enter'd into by Creditors to them, where no Commission of Bankrupt is awarded.

When an unfortunate Tradesman is deeply Indebted, it is usual, in regard to his Circumstances, for his Creditors to grant him a Letter of Licence, or safe Conduct, for the managing of his Affairs, free from Arrests, or other Disturbance, for a certain Space of Time expressly agreed upon: This is granted the Debtor to enable him to make the most of his Goods, and get in his Effects, in order to satisfy his Creditors when the Time is expired; and before it is not in his Power.

And as to Compositions, by a Law made 8 & 9 W. 3. it was enacted, That two Thirds in Number and Value of Creditors might make Compositions with Debtors, and bind all the rest (so as not to affect any Securities, Mortgages, &c.) But this by a subsequent Statute was repealed; and as the Law now stands, all the Creditors ought to be Parties both to Licences and Compositions.

Of

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Of these Licences and Compositions to and with Debtors, you'll see further in the following Precedents.

A Letter of Licence to a Debtor.

To all People, &c. We A. B. C. D. E. F. G. H. &c. whose Names are hereunder written, and Seals affixed, Creditors of T. B. of, &c. Merchant send Greeting. Whereas the said T. B. on the Day of the Date hereof is indebted unto us his said Creditors in divers Sums of Money, which by reason of great Losses and Misfortunes happened unto him, he is not at present able to pay and satisfie unto us without Respite of Time to be given him for that Purpose. Know ye therefore, that we the said Creditors and every of us, Do by these Presents give and grant unto the said T. B. our free Licence, and sure and safe Conduct to come and go and resort unto us, and every one of us his said Creditors, to compound and take Order with us, and every one of us, for our and every of our said Debts, and also to go about his other Business and Affairs at his free Will and Pleasure, from the Day of the Date hereof unto the full End and Term of one whole Year next coming, without any Let, Trouble, Suit, Arrest, Attachment, or other Disturbance to be offered or done unto him the said T. B. his Wares, Goods, Moneys, or Merchandizes whatsoever by us, or any of us, or by the Heirs, Executors, Administrators, Partners or Assigns of us, or any of us, or by our or any of our Means or Procurement. And we the said Creditors severally and respectively each for himself, his Executors and Administrators do
I
severally

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severally and apart, and not jointly, covenant and grant to and with the said *T. B.* by these Presents, that if any Hurt, Trouble, Vexation, Wrong, Damage or Hinderance shall be done unto the said *T. B.* either in his Body, Goods or Chattels, within the said Term of one whole Year from the Date hereof, by us or any of us the said Creditors, or by any Person or Persons by or through the Commandment, Procuring, Partnership or Consent of us, or any of us, against the Tenor, Form and Effect of this our present Licence or Writing of safe Conduct, That then he the said *T. B.* by Virtue of these Presents shall be discharged and acquitted for ever towards and against him and them of us, his and their Heirs, Executors, Administrators, Partners and Assigns, and every of them, by whom and by whose Means he shall be vexed, arrested, troubled or imprisoned, attached, grieved or damnified, of all Manner of Actions, Suits, Quarrels, Debts, Duties and Demands, either in Law or Equity, whatsoever, from the Beginning of the World to the Day of the Date of these Presents. Provided always, that if all the Creditors above-named shall not subscribe and seal these Presents, then the Liberty or Licence hereby given and granted, and every Clause, Matter and Thing therein contained shall cease, determine and be void to all Intents and Purposes, any Thing herein before contained to the contrary thereof in any wise notwithstanding. In Witness, &c.

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A Letter of Composition with a Debtor.

To all People, &c. We whose Names are hereunder subscribed and Seals affixed, Creditors of C. D. of, &c. hereby send Greeting. Whereas the said C. D. is and standeth indebted unto us severally in the several Sums of Money in the Schedule hereunto annexed particularly mentioned, which Moneys he is not of Ability to pay us in the whole, but a Part thereof. Know ye therefore that we the said Creditors in Consideration of the Premisses, and for divers other good Causes and Considerations, are severally and respectively contented and willing, and do by these Presents severally and respectively grant and agree to and with the said C. D. his Executors and Administrators, to accept after the Rate of 10 s. in the Pound in full Payment and Satisfaction of and for all Moneys to us severally by him due and owing as aforesaid, So as he the said C. D. shall well and truly satisfy and pay to us the said Creditors severally and respectively the said 10 s. in the Pound for all such Moneys as are by him due and owing to us severally as aforesaid in Manner following (*viz.*) one Half thereof upon, &c. next coming, and the other half thereof in and upon, &c. which will be in the Year of our Lord, &c. Provided always, and these Presents are upon this Condition, that if Default of Payment shall be made by the said C. D. of any the Sum or Sums of Money to us severally to be paid as aforesaid, that then this Agreement as to such Person only to whom any such Default of Payment shall be made, shall be utterly void and of none Effect, any Thing herein contained to the contrary

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contrary thereof notwithstanding. And we the said Creditors do hereby covenant and grant, and every of us respectively for his own Part covenanteth and granteth that if at any Time hereafter before any Default of Payment shall be made by the said C. D. of any Sum or Sums of Money agreed to be paid in Pursuance of these Presents, the said C. D. shall happen to be arrested, attached or molested by us, or any or either of us, or for or in the Name of us, or any or either of us, or by our, or any or either of our Means or Procurement, for any Debt, Duty or Demand due to us, or any or either of us, that then and from thenceforth he the said C. D. his Executors and Administrators shall be absolutely freed and discharged against him or them of us by whom or by whose Means or Procurement the said C. D. in his Body or Goods shall be sued, arrested, attached or molested, of and from all Actions, Debts, Duties and Demands whatsoever from the Beginning of the World unto the Day of the Date hereof. In Witness, &c.

concern thereof notwithstanding. And as to the
 said Conditions do hereby covenant and grant
 and every of us respectively for his own Part
 covenanteth and granteth that if at any Time
 hereafter before any District Justice shall
 be made by the said C. D. of any Sum or Sums
 of Money agreed to be paid in pursuance of
 such Process, the said C. D. shall happen to be
 arrested, attached or molested by us, or any of
 other of us, or by one or the Name of us, or
 any or either of us, or by one or any of either
 of our Names or Process, for any Debt,
 Liability or Demand due to us, or any of either of
 us, then then and then thereafter the said
 C. D. the Process and Attachment shall be
 entirely free and discharged against him, or
 them, or us by whom or by whose Name or
 Processment the said C. D. in his Body or
 Goods shall be sued, arrested, attached or in-
 terdicted, and from all Costs, Fees, Damages
 and Demands whatsoever from the beginning of
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